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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968-1969

No. ~~243~~ 23

CALVIN TURNER, et al.,

Appellants,

—v.—

W. W. FOUCHER, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

JURISDICTIONAL STATEMENT FILED DECEMBER 14, 1968
PROBABLE JURISDICTION NOTED FEBRUARY 24, 1969

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Relevant Docket Entries

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Interrogatories to Defendants Jones, et al.	December 21, 1967
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Filed

Interrogatories to Defendants Moore, et al.	December 21, 1967
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Response of Defendants to Admis- sions	January 10, 1968
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Defendants Exhibit I, II and III	February 23, 1968
Report to the Court in Behalf of Defendant Jury Commissioners	April 19, 1968

Filed

Order on Pending Motions	June 5, 1968
Responsive Pleadings on Remaining Defendants	June 10, 1968
Opinion and Order of Three-Judge Court	August 5, 1968
Final Judgment	September 19, 1968
Notice of Appeal Filed	October 14, 1968
A Transcript of Proceedings on February 23, 1968 filed	November 18, 1968

Complaint

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
Civil Action No. 1357

CALVIN TURNER, and SANDRA JUANITA TURNER, a minor by
Calvin Turner, her father and next friend, and all
others similarly situated,

Plaintiffs,

—v.—

W. W. FOUCHE, RASTUS DURHAM, and ELMO BACON, Individually, and as representatives of the class of persons known as Grand Jurors of Taliaferro County, Georgia; CRANSTON JONES, W. A. DRINKARD, CARL CHAPMAN, H. E. WILLIAMS, JR., and MRS. WILLIE MAE FAMBROUGH, Individually, and as Members of the Board of Education of Taliaferro County, Georgia; E. C. MOORE, GUY BEAZLEY, J. M. TAYLOR, L. T. LUNCEFORD, and CLARENCE GRIFFITH, Individually, and as Jury Commissioners of Taliaferro County, Georgia,

Defendants.

I.

PARTIES

A. *Plaintiffs*

1. Plaintiff, Calvin Turner, is a Negro citizen of the State of Georgia and a citizen of the United States, re-

siding in Taliaferro County, Georgia. He is a registered voter and the father of children attending the schools of Taliaferro County, Georgia. He sues on behalf of himself and his children as well as all Negro residents of Taliaferro County, Georgia, similarly situated, which class is too numerous to bring before this Court.

2. Sandra Juanita Turner, is a Negro citizen of the State of Georgia and a citizen of the United States, residing in Taliaferro County, Georgia. She attends a school that is part of the County School System of Taliaferro County, Georgia. She sues on behalf of herself and all Negro school children of Taliaferro County, Georgia, similarly situated, which class is too numerous to bring before this Court.

B. Defendants

3. Defendants, W. W. Fouche, Rastus Durham, and Elmo Bacon, are white citizens of the State of Georgia and of the United States, residing in Taliaferro County, Georgia. They are registered voters and Members of the Grand and Traverse Juries of Taliaferro County, Georgia. They are sued individually, and in their capacities as Grand Jurors of Taliaferro County, Georgia.

4. Defendants, Cranston Jones, W. A. Drinkard, H. E. Williams, Jr., Carl Chapman, and Mrs. Willie Mae Fambrough, are white citizens of the State of Georgia and of the United States, residing in Taliaferro County, Georgia. They are all Members of the Board of Education of Taliaferro County, Georgia, chosen for the positions by the Grand Jury of said county. They are sued individually, and in their capacities as Members of the Board of Education of Taliaferro County, Georgia.

5. Defendants, E. C. Moore, Guy F. Beazley, J. M. Taylor, L. T. Lunceford, and Clarence Griffith, are white citizens of the State of Georgia and of the United States, residing in Taliaferro County, Georgia. They are all Jury Commissioners for said county, chosen by the Honorable Robert L. Stephens, a white citizen of the State of Georgia and of the United States, residing in McDuffie County, Georgia, Superior Court Judge for the Toombs Judicial Circuit. They are sued individually, and in their capacities as Jury Commissioners for Taliaferro County, Georgia.

II.

JURISDICTION

6. The jurisdiction of this Court over the complaint arises under Title 28, United States Code, Sections 1331 (a), 1343(3) and (4), 2201, 2202, 2281, and 2284; Title 42, United States Code, Sections 1981, 1983, 1988, 1994, 2000d, and 2000e; and the Constitution of the United States, and more particularly, the Fifth, Ninth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto.

7. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand (\$10,000.00) Dollars.

III.

CAUSE OF ACTION

8. The defendants herein, under color of certain laws of the State of Georgia, have purposefully pursued a custom, practice, or usage, jointly and severally, and with

other persons to the plaintiffs unknown, to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities, secured to them by the Constitution and laws of the United States.

9. Pursuant to this custom, practice, and usage, the defendants, for the purpose of depriving, either directly or indirectly, the plaintiffs and the members of the class which they represent of equal educational opportunities, have chosen and continue to choose, solely on the basis of race, all-white members on the Board of Education of Taliaferro County, Georgia.

10. Plaintiffs and other Negro citizens have made every effort to communicate their dissatisfaction with the schools of Taliaferro County to the defendants, but to no avail. The schools of Taliaferro County are integrated in name only: those who attend the county schools of Taliaferro County, Georgia, are all-Negro; all the white students presently residing in Taliaferro County, Georgia, attend either a private school set up expressly for the purpose of avoiding the integration compelled by the Constitution and laws of the United States, or schools outside the county. Among those white children attending said private school or schools outside the county are children of the named defendants.

11. Defendants have chosen and threaten to continue to choose an all-white school board to superintend the all-black public schools of Taliaferro County, Georgia pursuant to a number of State Constitutional statutes or provisions:

(a) Article VIII, Section V, paragraph I, of the Constitution of the State of Georgia of 1945 (2 Ga. Code Ann., Sec. 6801), which provides that:

"2-6801. Paragraph I. *Establishment and maintenance; board of education; election, term, etc.*—Authority is granted to counties to establish and maintain public schools within their limits. Each county, exclusive of any independent school system now in existence in a county, shall compose one school district and shall be confined to the control and management of a County Board of Education. The Grand Jury of each county shall select from the citizens of their respective counties five freeholders, who shall constitute the County Board of Education. Said members shall be elected for the term of five years except that the first election of Board members under this Constitution shall be for such term that will provide for the expiration of the term of one member of the County Board of Education each year. In case of a vacancy on said Board by death, resignation of a member, or from any other cause other than the expiration of such member's term of office, the Board shall by secret ballot elect his successor, who shall hold office until the next Grand Jury convenes at which time the said Grand Jury shall appoint the successor member of the Board for the unexpired term. The members of the County Board of Education of such county shall be selected from that portion of the county not embraced within the territory of an independent school district.

The General Assembly shall have authority to make provision for local trustees of each school in a county system and confer authority upon them to make

recommendations as to budgets and employment of teachers and other authorized employees."

Said constitutional provision of the State of Georgia is unconstitutional under the Equal Protection and Due Process of Law Clauses of the Fourteenth Amendment of the Constitution of the United States, and the Thirteenth Amendment thereto, on its face and as applied by reason of the systematic and long continued exclusion of Negroes and non-freeholders as members of the Board of Education, and the total exclusion or limited inclusion of members of the Negro race on the selecting grand juries.

(b) Sections 902, 902.1, 903, and 905, 32 Georgia Code Annotated, which provide that:

"32-902. *Membership in County boards.*—The grand jury of each county (except those counties which are under a local system) shall, from time to time, select from the citizens of their respective counties five freeholders, who shall constitute the county board of education. Said members shall be elected for the term of four years, and shall hold their offices until their successors are elected and qualified. Provided, however, that no publisher of schoolbooks, nor any agent for such publisher, nor any person who shall be pecuniarily interested in the sale of schoolbooks, shall be eligible for election as members of any board of education or as county superintendent of schools: Provided, further, that whenever there is in a portion of any county a local school system having a board of education of its own, and receiving its pro rata of the public school fund directly from the State Superintendent of Schools, and having no dealings what-

ever with the county board of education, then the members of the county board of education of such county shall be selected from that portion of the county not embraced within the territory covered by such local system." (Acts 1919, p. 320.)

"32-902.1. *Selection of board members by grand jury.*—

The members of the county boards of education in those counties in which the grand jury selects such members pursuant to Article VIII, Section V., Paragraph I of the Constitution of Georgia of 1945, as amended (Sec. 2-6801), shall be selected by the last grand jury immediately preceding the expiration of the term of the member that the member to be selected will replace." (Acts 1953, Nov. Sess., p. 334.)

"32-903. *Qualifications of members.*—The grand jury in selecting the members of the county board of education shall not select one of their own number then in session, nor shall they select any two of those selected from the same militia district or locality, nor shall they select any person who resides within the limits of a local school system operated independent of the county board of education, but shall apportion members of the board as far as practicable over the county; they shall elect men of good moral character, who shall have at least a fair knowledge of the elementary branches of an English education and be favorable to the common school system. Whenever a member of the board of education moves his residence into a militia district where another member of the board resides, or into a district or municipality that has an independent local school system, the member changing his residence shall immediately

cease to be on the board and the vacancy shall be filled as required by law. Notwithstanding the foregoing provisions to the contrary, a county may provide by local law that two or more members of the board of education may be selected from the same militia district." (Acts 1919, pp. 288, 321; 1965, p. 124.)

"32-905. *Certificate of election; removal; vacancies.*—

Whenever members of a county board are elected or appointed, it shall be the duty of the clerk of the superior court to forward to the State Superintendent of Schools a certified statement of the facts, under the seal of the court, as evidence upon which to issue commissions. This statement must give the names of the members of the board chosen and state whom they succeed, whether the offices were vacated by resignation, death or otherwise. The evidence of the election of a county superintendent of schools shall be the certified statement of the secretary of the meeting of the board at which the election was held. Any member of a county board of education shall be removable by the judge of the superior court of the county, on the address of two-thirds of the grand jury, for inefficiency, incapacity, general neglect of duty, or malfeasance or corruption in office, after opportunity to answer charges; the judges of the superior courts shall have the power to fill vacancies, by appointment, in the county board of education for the counties composing their respective judicial circuits, until the next session of the grand juries in and for said counties, when said vacancies shall be filled by said grand juries." (Acts 1919, p. 322.)

Each of said statutes is unconstitutional under the Equal Protection and Due Process of Law Clauses of the Fourteenth Amendment of the Constitution of the United States, and the Thirteenth Amendment thereto, on its face and as applied, by reason of the systematic and long continued exclusion of Negroes, the uncertainty, vagueness, and ambiguousness of the standards set forth therein, and by reason of the total exclusion of non-freeholders as Members of the Board of Education of Taliaferro County.

(c) Section 101, 59 Georgia Code Annotated, which provides that:

"59-101 (813 P. C.) *Jury commissioners; appointment; number; qualifications; terms; removal.*—There shall be a board of jury commissioners, composed of six discreet persons, who are not practicing attorneys at law nor county officers, who shall hold their appointment for six years, and who shall be appointed by the judge of the superior court. On the first appointment two shall be appointed for two years, two for four years, and two for six years, and their successors shall be appointed for six years. The judge shall have the right to remove said commissioners at any time, in his discretion, for cause, and appoint a successor: Provided, that no person shall be eligible or appointed to succeed himself as a member of said board of jury commissioners." (Acts 1878-9, p. 27; 1887, p. 52; 1901, p. 43; 1935, p. 151.)

Said statute is unconstitutional, under the Equal Protection and Due Process of Law Clauses of the Fourteenth Amendment of the Constitution of the United States, and the Thirteenth Amendment thereto, in that, the standards set forth therein for qualification and eligibility as a jury

commissioner are so vague, indefinite and uncertain and by reason of the total exclusion of members of the Negro race from service as jury commissioners in Taliaferro County.

(d) Section 106, 59 Georgia Code Annotated (Ga. Laws 1967, Vol. I, p. 251) which provides that:

"59-106. Immediately upon the passage of this Act and thereafter at least biennially, or, if the judge of the superior court shall direct, at least annually, on the first Monday in August, or within sixty (60) days thereafter, the board of jury commissioners shall compile and maintain and revise a jury list of upright and intelligent citizens of the county to serve as jurors. In composing such a list they shall select a fairly representative cross-section of the upright and intelligent citizens of the county from the official registered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significantly identifiable group in the county which may not be fairly represented thereon.

After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number, not exceeding two-fifths of the whole number, to serve as grand jurors. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse

jurors for the county, to be drawn for service as provided by law, except when a name which has already been drawn for the same term as a grand juror shall also be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead."

Said statute is unconstitutional, under the Equal Protection and Due Process of Law Clauses of the Fourteenth Amendment of the Constitution of the United States, and the Thirteenth Amendment thereto, by reason of the uncertainty, indefiniteness, vagueness, of the standards set forth therein for service as grand and traverse jurors, and by reason of the token inclusion of members of the Negro race from grand and traverse jury service in Taliaferro County.

12. The jury commissioners of Taliaferro County, Georgia, who are empowered by law to choose the members of the grand and traverse juries of said county, are all white. There has never been, within recent memory, a Negro jury commissioner in Taliaferro County, Georgia. The jury commissioners are chosen by the Judge of the Superior Court of Taliaferro County, Georgia. Said judge, the Honorable Robert L. Stephens, is white.

13. There are 2,097 Negro residents in Taliaferro County, Georgia, of whom 979 are over the age of 21 years, including 435 males and 544 females.

14. There are 1,273 white persons resident in Taliaferro County, Georgia, of whom 877 are over the age of 21 years, including 395 males and 482 females.

15. There are 1,172 members of the Negro race enrolled as registered voters in Taliaferro County, Georgia, and hence eligible for service on the grand and traverse juries of said county.

16. There are 1,053 white persons enrolled as registered voters in Taliaferro County, Georgia, and hence eligible for service on the grand and traverse juries of said county.

17. White persons are grossly over-represented on the grand and traverse jury lists of Taliaferro County, Georgia, as chosen by the all-white jury commissioners, while Negroes are grossly under-represented.

18. Plaintiffs allege that as a result of defendants' conduct, they and the members of their class are unable to enjoy the full and equal benefit of public education in Taliaferro County, Georgia, free of discrimination or segregation because of their race or color. The policy, custom, practice, and usage of the defendant school board has been such as to deprive the plaintiffs and members of their class of textbooks, facilities, laboratories, recreation facilities, teaching programs, bus transportation, and a multiplicity of other advantages which should rightfully be theirs as the intended beneficiaries of laws of the United States providing for equal educational opportunities without regard to race or color or previous condition of servitude. The deprivation of such advantages means that the minor plaintiffs are ill-equipped to advance in the modern world, and must needs become peons in the hands of the white entrepreneurs of said county.

IV.

EQUITY

19. Unless this Court restrains the enforcement, operation, and execution of the aforesaid void, unconstitutional, and illegal state statutes, which statutes are void and illegal on their face and as applied herein, in that, they violate the Constitution of the United States, and in particular, the Fifth, Ninth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto. These statutes violate the fundamental guarantees of due process of law in that they are vague and indefinite, and as such lead to the denial of equal protection and due process to all persons of all races and sexes. Moreover, said statutes and constitutional provisions impress plaintiffs and the class which they represent with badges of slavery and the indica of the previous condition of servitude of their ancestors.

20. Plaintiffs have no adequate remedy at law. Plaintiffs pray that they, for themselves, and for members of the class which they represent be awarded ancillary money damages in the amount of \$500,000.00 to compensate them for past deprivations and denials of their federal constitutional and statutory rights, privileges, and immunities by the defendants or some of them.

WHEREFORE, plaintiffs pray for the following relief:

(1) That pursuant to Title 28, United States Code, Sections 2281 and 2284, a three-judge federal district court be immediately convened to hear and determine this proceeding;

(2) That a preliminary and permanent injunction issue restraining the defendants, their agents, attorneys, and successors in office, from the enforcement, operation, or execution of Sections 2-6801, 32-902, 32-902.1, 32-903, 32-905, 59-101 and 59-106, Code of Georgia Annotated;

(3) That a declaratory judgment issue declaring and adjudging Sections 2-6801, 32-902, 32-902.1, 32-903, 32-905, 59-101, and 59-106, of Georgia Code Annotated void on their face, null and void as violative of the Constitution of the United States, and/or as applied by the defendants herein;

(4) That the memberships of the County Board of Education of Taliaferro County, Georgia, be declared vacant;

(5) That a receiver be appointed to operate the Taliaferro County, Georgia, County School System pending the selection of new county school board officials on a constitutionally acceptable basis;

(6) That the present membership of the Grand and Traverse Jury Lists of Taliaferro County, Georgia, be declared vacant and void;

(7) That the positions of jury commissioners for Taliaferro County, Georgia, be declared vacant, null and void;

(8) That this Court appoint a special master to appoint members for the grand and traverse juries of Taliaferro County, Georgia;

(9) That ancillary damages be awarded in the sum of \$500,000.00;

(10) That this Court grant and all other relief which it may deem meet and proper.

Order Appointing Three-Judge Court

The Honorable Frank M. Scarlett, District Judge, United States District Court for the Southern District of Georgia, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a District Court of three Judges, I, John R. Brown, Chief Judge of the Fifth Circuit, hereby designate the Honorable Griffin B. Bell, United States Circuit Judge, and the Honorable Lewis R. Morgan, United States District Judge for the Northern District of Georgia, to serve with Judge Scarlett as members of, and with him to constitute the said Court to hear and determine the action.

WITNESS my hand this 22nd day of November, 1967.

JOHN R. BROWN
Chief Judge, Fifth Circuit

Motion to Dissolve Three-Judge Court

The defendants move the Court as follows:

To dissolve the Three-Judge Court, convened in this case by order of Chief Judge John R. Brown, and remand the case for determination on all proper issues which may be made for that:

(a) No substantial question of the constitutionality *vel non* of any state statute appears from the face of the pleadings, the mere allegation that certain statutes are unconstitutional under certain clauses of certain amendments to the Constitution being insufficient;

(b) No substantial question of the constitutionality of the Georgia statutes quoted in the complaint is raised in that the complainants do not seek to forestall the demands of any general state policy, the validity of which they challenge;

(c) A Three-Judge Court is not required or authorized in a case where the complaint is that the statutes are unconstitutional as applied.

**Request for Admission of Facts by the Defendants
W. W. Fouche, et al.**

The plaintiffs request that the defendants, W. W. Fouche, et al., within ten days after service of this request to admit, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. The jury commissioners of Taliaferro County, Georgia, are all members of the so-called white or Caucasian race.
2. The jury commissioners of Taliaferro County, Georgia, have been members of the so-called white or Caucasian race for at least fifty (50) years.
3. Within recent memory, there have been no Negro jury commissioners of Taliaferro County, Georgia.
4. The members of the Board of Education of Taliaferro County, Georgia, are members of the so-called white or Caucasian race.
5. Within recent memory, and for at least fifty (50) years, the members of the Board of Education of Taliaferro County, Georgia, have been members of the so-called white or Caucasian race.
6. There have never been, within recent memory, any Negro members of the Board of Education of Taliaferro County, Georgia.
7. No children of any members of the present board of education of Taliaferro County, Georgia, attend the public schools of Taliaferro County, Georgia.

8. No children of the so-called white or Caucasian race attend the public schools of Taliaferro County, Georgia.

9. The jury lists for the grand and traverse juries of Taliaferro County, Georgia, contain no more than thirty percent (30%) members who are Negroes.

10. The jury lists contain no more than twenty-five (25%) percent members who are females.

11. There are no teachers in the public schools of Taliaferro County, Georgia, who are members of the so-called white or Caucasian race.

12. There are no free school buses provided for children who attend the public schools of Taliaferro County, Georgia.

13. The members of the school administration of Taliaferro County, Georgia, are all members of the so-called white or Caucasian race.

14. The expenditure of funds per pupil in Taliaferro County, Georgia, is less today than it was when there were members of the so-called white or Caucasian race attending the public schools of Taliaferro County, Georgia.

15. The number of teachers in the public schools of Taliaferro County, Georgia, who are members of the so-called white or Caucasian race is less than it was when children of the so-called white or Caucasian race were attending the public schools of Taliaferro County, Georgia.

16. The average level of higher education attained by the teachers in the public schools of Taliaferro County,

Georgia, is less today than it was during that period when said public schools were attended by pupils of the so-called white or Caucasian race.

17. The number of library books per pupil in the public schools of Taliaferro County, Georgia, is less today than it was when members of the so-called white or Caucasian race were pupils in the said public school system.

18. The average number of pupil per classroom is greater today in the public schools of Taliaferro County, Georgia, than it was when members of the so-called white or Caucasian race were attending the said public school system.

19. The number of pupils per teacher in the public schools of Taliaferro County, Georgia, is greater today than it was when members of the so-called white or Caucasian race were attending the said public school system.

20. The number of specialists per pupil engaged by the public school system of Taliaferro County, Georgia, is less today than it was when members of the so-called white or Caucasian race were attending the public schools of said public school system.

By specialists, I have reference to Guidance Teachers, Speech Therapists, Music Teachers, and the like.

Please take notice that a copy of such admissions must be served upon the undersigned within ten (10) days after service of these requests for admission, which service is complete upon mailing of same under Rule 5, Federal Rules of Civil Procedure.

This 18th day of December, 1967.

Interrogatories to Defendants Jones, et al.

Plaintiffs request that the defendants, Cranston Jones, W. A. Drinkard, Carl Chapman, H. E. Williams, Jr., and Mrs. Willie Mae Fambrough, as Members of the Board of Education of Taliaferro County, Georgia, each answer, separately and individually, under oath, in accordance with Rule 33, Federal Rules of Civil Procedure, the following numbered interrogatories:

1. State your name, address, age, occupation, race, and sex.
2. State how long you have been a member, or were a member, of the Board of Education of Taliaferro County, Georgia.
3. List each person with whom you served on the Board of Education of Taliaferro County, Georgia, giving the name, address, occupation, race, and sex, of each person with whom you served on the Board of Education of Taliaferro County, Georgia.
4. Give the name, address, and occupation of each member of the Negro race who served with you on the Board of Education of Taliaferro County, Georgia.
5. Give the name of any Negro who you know of as having served on a Board of Education in Taliaferro County, Georgia.
6. Do you have any children between the ages of six and seventeen? If so, give the name and address of any and all schools which said children attend.

7. Give the name and address of any white children who attend the public schools of Taliaferro County, Georgia.

8. Is busing service provided for the children who attend the public schools of Taliaferro County, Georgia?

9. Give the names, addresses, and races of those who administer the public schools of Taliaferro County, Georgia.

10. Give the names, addresses, educational background, and races of those who teach in the public schools of Taliaferro County, Georgia.

11. What is the teacher-pupil ratio in the public schools of Taliaferro County, Georgia?

12. What was the teacher-pupil ratio in these public schools in 1964?

13. What is the present per pupil expenditure in the public schools of Taliaferro County, Georgia?

14. What was the per pupil expenditure in the public schools of Taliaferro County, Georgia, in 1964?

15. How many specialists are employed in the public schools of Taliaferro County, Georgia?

16. How many specialists were employed in the public schools of Taliaferro County, Georgia, in 1964?

17. What is the number of books per pupil in the libraries of the public schools of Taliaferro County, Georgia?

18. What was the number of books per pupil in the libraries of the public schools of Taliaferro County, Georgia, in 1964?

19. What is the average number of years of higher education attained by the teachers in the public schools of Taliaferro County, Georgia?

20. What was the average number of years of higher education attained by the teachers in the public schools of Taliaferro County, Georgia, in 1964?

22. Do the public schools of Taliaferro County, Georgia, receive any funds from the federal government? If so, state the amount.

23. At any time in the past, have the public schools of Taliaferro County, Georgia, received any federal funds? If so, state the years in which such funds were received and the respective amounts.

24. Did white pupils attend the public schools of Taliaferro County, Georgia, in substantial numbers during the year 1964?

25. How many public schools are there in Taliaferro County, Georgia? Give the name, address, grades, and number of pupils of each race attending each such school.

26. What is the total budget of the public school system of Taliaferro County, Georgia?

27. What are the sources of funds for this budget? List each source and the amount contributed by it.

28. Are there any private schools in Taliaferro County? Give the name, address, grades, and number of pupils of each race attending each such school.

29. What amount has the public school system of Taliaferro County ever contributed to any such private schools within the county? List each contribution in dollars or the dollar value of any property contributed, and the year in which made.

30. In what militia district do you live?

31. How many teachers are there in the public schools of Taliaferro County today?

32. How many teachers were in the public schools of Taliaferro County in 1964?

33. Do you receive any salary or compensation as a member of the Board of Education? If so, what.

34. How many times does the Board of Education meet each month?

35. Do you have a regular time, date, and place for the meetings of the Board of Education? If so, state the same.

36. Are the meetings of the Board of Education open to the public?

37. Are the minutes made of the meetings of the Board of Education?

38. How many times have you met since September 1, 1967?

39. How many times did you meet between September 1, 1964 and January 1, 1965?

40. Is notice given to the public of the meetings of the Board of Education? If so, by what means?

41. What are the names, addresses, and races of the principals of the Taliaferro Public School System?

42. Who hires said principals?

43. What is the name, address, and race of the Superintendent of Schools for Taliaferro County?

44. Did any children of yours attend the public schools of Taliaferro County, Georgia, in 1964? If so, state which grades they attended during such years.

This 20th day of December, 1967.

Interrogatories to Defendants Fouche, et al.

Plaintiffs request that the defendants, W. W. Fouche, Rastus Durham, and Elmo Bacon, as representatives of the class of persons known as Grand Jurors of Taliaferro County, Georgia, each separately and individually, answer under oath in accordance with Rule 33, Federal Rules of Civil Procedure, the following numbered interrogatories:

1. State your name, address, race, and occupation.
2. Are you presently a member of the Grand Jury of Taliaferro County, Georgia?
3. Have you at any time in the past been a member of the Grand Jury of Taliaferro County, Georgia? If so, state the years in which you served as a grand juror.
4. Give the name and the year in which any person whom you were able to identify as a member of the Negro race served with you on the Grand Jury of Taliaferro County, Georgia.
5. While a member of the Grand Juries of Taliaferro County, Georgia, did you ever participate in the election of members of the Board of Education of said county?
6. If you did participate in such election, describe the procedure fully and completely.
7. For each of the years in which you participated in the election of Members of the Board of Education of Taliaferro County, Georgia, give the name, address, race,

and occupation of those persons who were selected to be members of the Board of Education of said county. For each of the persons you have listed, also give the year in which said person was elected.

8. Do you presently have any children who are between the ages of six and seventeen? If so, give the name and address of the school or schools which they attend.

9. To your knowledge, has there ever been a Negro who has served on the Board of Education of Taliaferro County, Georgia? If so, give the name, address and occupation of said Negro.

10. To your knowledge, are there any children of the so-called white or Caucasian race who attend any of the public schools of Taliaferro County, Georgia? If so, give the names, grades, and addresses of said white children.

11. State how many persons are on the Grand Jury Lists of Taliaferro County, Georgia. Of that number, how many are members of the Negro race? Further, of that number, how many are females?

This 20th day of December, 1967.

Interrogatories to Defendants Moore, et al.

Plaintiffs request that the defendants, E. C. Moore, Guy Beazley, J. M. Taylor, L. T. Lunceford, and Clarence Griffith, as Jury Commissioners of Taliaferro County, Georgia, each answer, separately and individually, under oath in accordance with Rule 33, Federal Rules of Civil Procedure, the following interrogatories:

1. State your name, age, address, race, and occupation.
2. For how long have you been a jury commissioner of Taliaferro County, Georgia?
3. List the name of each and every person with whom you have ever served as a jury commissioner of Taliaferro County, Georgia. For each such person, give the years in which you served with them, as well as their name, address, occupation, and race.
4. Within your memory, has there ever been a Negro jury commissioner of Taliaferro County, Georgia? If so, give the name, address, and occupation of such Negro jury commissioner.
5. How many persons are presently on the Grand Jury List for Taliaferro County, Georgia? When was this latest revision completed?
6. How many members of the present grand jury list are members of the Negro race?
7. How many members of the present grand jury list are white females?

8. How many members of the present grand jury list are Negro females?

10. Describe, in full and complete detail, the procedures which you followed in selecting persons for the grand jury list of Taliaferro County, Georgia.

11. State how you determined whether a person is upright and intelligent.

12. What significantly identifiable groups do you know of in Taliaferro County, Georgia?

13. Is the grand jury list, as presently composed, a fairly representative cross-section of the upright and intelligent citizens of Taliaferro County, Georgia?

14. If the answer to No. 13 is "yes," describe in full and complete detail the standards which you have applied in making such a determination. If the answer to the preceding question was "no," describe in full and complete detail the standards which you applied in making such a determination.

15. What steps, if any, did you personally take to insure that any and all significantly identifiable groups in Taliaferro County, Georgia, were fairly represented on the grand jury list?

16. How many names are on the official registered voter's list which you used, pursuant to law, in selecting the latest grand jury list for Taliaferro County, Georgia?

17. Of the names on the voter's list, how many are Negroes?

18. Of the names on the voter's list, how many are white females?

19. Of the names on the voter's list, how many are Negro females?

20. Describe in complete detail any and all demographic information contained on the voter's list which you used in compiling the grand jury list for Taliaferro County, Georgia.

21. If you are unable to give the number of Negroes, white females, and Negro females, on the grand jury list which you have selected, describe in full and complete detail how you were able to determine that such lists are fairly representative cross-sections of the upright and intelligent citizens of Taliaferro County, Georgia.

22. List any and all groups, associations, or social clubs to which you belong.

23. List the names of any Negroes who belong to any of the clubs or groups which you have listed in the preceding question, being sure to give not only the name of the Negro, but the name of the club to which he belongs in common with you.

This 20th day of December, 1967.

**Answers of Defendants E. C. Moore, Guy Beazley,
J. M. Taylor, L. T. Lunceford and Clarence Griffith
to Plaintiffs' Interrogatories**

The aforesaid defendants in accordance with the Federal Rules of Civil Procedure answer plaintiffs' interrogatories as follows:

1. (a) E. C. Moore, age 56, Route 1, Crawfordville, Georgia, race—white, occupation—merchant;

(b) Guy Beazley, age 67, Rayle, Georgia, race—white, occupation—mule trader;

(c) J. Milton Taylor, age 57, Crawfordville, Georgia, race—white, occupation—farmer;

(d) L. T. Lunceford, age 63, Route 1, Crawfordville, Georgia, race—white, occupation—farmer;

(e) Clarence Griffith, age 37, Crawfordville, Georgia, race—white, occupation—appliance serviceman.

2. (a) three years.

(b) I do not remember.

(c) nine months.

(d) nine months.

(e) three years.

3. (a) I have served as a Jury Commissioner for Taliaferro County, Georgia with:

a. Clarence Griffith, Crawfordville, Georgia, from August 1964 to date, occupation—appliance serviceman, race—white;

b. Guy Beazley, Route 1, Rayle, Georgia, from August 1964 to date, occupation—mule trader, race—white;

c. Reuben H. Jones, Route 2, Crawfordville, Georgia, from August 1964 to date, occupation—farmer, race—white;

d. Wallace Andrews, Robinson, Georgia, served during year 1964, occupation—farmer, race—white;

e. R. O. Edwards, Route 1, Crawfordville, Georgia, served during year 1964 and 1965, occupation—farmer, race—white;

f. J. M. Taylor, Robinson, Georgia, served during year 1967, occupation—farmer, race—white;

g. L. T. Lunceford, Route 1, Crawfordville, Georgia, served during year 1967, occupation—farmer, race—white;

(b) I do not remember.

(c) I have served with the following persons since April 1967:

a. Clarence Griffith, Crawfordville, Georgia, occupation—merchant, race—white;

b. Guy Beazley, Rayle, Georgia, occupation—farmer, race—white;

c. Reuben Jones, Route 2, Crawfordville, Georgia, occupation—merchant, race—white;

d. L. T. Lunceford, Crawfordville, Georgia, occupation—farmer, race—white;

(d) I have served with the following persons since April 1967:

a. Clarence Griffith, Crawfordville, Georgia, occupation—merchant, race—white;

b. Guy Beazley, Rayle, Georgia, occupation—mule trader, race—white;

c. Reuben Jones, Route 2, Crawfordville, Georgia, occupation—farmer, race—white;

d. E. C. Moore, Route 1, Crawfordville, Georgia, occupation—merchant, race—white.

(e) I have served as a Jury Commissioner for Taliaferro County, Georgia with the following persons. I do not remember the years I served with them:

a. Ralph Edwards, Crawfordville, Georgia, occupation—farmer, race—white;

b. Wallace Andrews, Robinson, Georgia, occupation—farmer, race—white;

c. E. C. Moore, Route 1, Crawfordville, Georgia, occupation—merchant, race—white;

d. Guy Beazley, Rayle, Georgia, occupation—mule trader, race—white;

e. J. M. Taylor, Robinson, Georgia, occupation—farmer, race—white;

f. L. T. Lunceford, Crawfordville, Georgia, occupation—farmer, race—white.

4. No.

5. 130; latest revision completed in 1967.

6. We do not know.

7. We do not know.

8. We do not know.

10. From the official registered voters list which was used in the last preceding general election, as a group we selected a fairly representative cross-section of the upright and intelligent citizens of the county. There was no set procedure for this selection process. We did it as a group.

11. Our determination was based upon knowledge already possessed by a jury commissioner or commissioners or upon an investigation by a jury commissioner or commissioners.

12. Among the significantly identifiable groups in Taliaferro County, Georgia, there are by race white persons and Negro persons; by religion there are Catholics, Baptists, Methodists, Presbyterians.

13. Yes.

14. We did not detail or fix any standards in making a determination as to who is upright and intelligent. As previously stated, this determination was based upon our knowledge either personal or through investigation of those persons being considered.

15. There is a jury commissioner for each district of the county. Taliaferro County is extremely small and the jury commissioners know practically all of the people

within their respective districts. Through this knowledge we tried to insure that all groups in Taliaferro County were fairly represented on the jury list.

16. Approximately 2,000.

17. We do not know.

18. We do not know.

19. We do not know.

20. None.

21. As previously stated, we relied upon the knowledge of the individual jury commissioners based upon their knowing or finding out about those persons who lived within their respective districts within Taliaferro County.

22. (a) Methodist Church

(b) Baptist Church

(c) Presbyterian Church

(d) Methodist Church

(e) American Legion, Kiwanis Club, Hunting Club

23. None

Response of Defendants to Plaintiffs' Request for Admission of Facts

1. Request No. 1 is admitted.
2. As to request No. 2, the knowledge of defendants does not encompass the period of the last fifty years; nevertheless, so far as defendants know or have reason to believe, the jury commissioners of Taliaferro County for at least fifty years have been members of the white or Caucasian race.
3. As to request No. 3, defendants do not know what plaintiffs mean by the terminology "Within recent memory". Defendants admit only that within their individual memories there have been no Negro jury commissioners of Taliaferro County, Georgia.
4. Request No. 4 is admitted.
5. So far as defendants know, request No. 5 is true and to that extent is admitted.
6. So far as defendants know, request No. 6 is true and to that extent is admitted.
7. Request No. 7 is admitted.
3. Request No. 8 is admitted.
9. The race of each of those persons whose name is now in the jury box of Taliaferro County is not sufficiently known to the defendants for them to be in position to state whether or not request No. 9 is true or false.

10. The sex of each of those persons whose name is now in the jury box of Taliaferro County is not sufficiently known to the defendants for them to be in position to state whether or not request No. 10 is true or false.

11. Request No. 11 is admitted.

12. Request No. 12 is denied because of the fact that it is completely false. At the present time, seven free school buses provide transportation for at least 95% of the students who attend the public schools of Taliaferro County.

13. In response to Request No. 13, defendants admit that the one person who administers the schools of Taliaferro County is a member of the so-called white or Caucasian race.

14. In response to Request No. 14, defendants state that the present per pupil expenditure of funds is greater today than it was when there were members of the so-called white or Caucasian race attending the public schools of Taliaferro County, Georgia.

15. Request No. 15 is admitted.

16. In response to Request No. 16, defendants state that the average level of higher education attained by the teachers in the public schools of Taliaferro County, Georgia, is today about the same as it was during the period when the public schools of Taliaferro County were attended by pupils of the so-called white or Caucasian race.

17. In response to Request No. 17, defendants state that the number of library books per pupil in the public schools of Taliaferro County, Georgia, is greater today than it was when members of the so-called white or Caucasian race were pupils in the said public school system.

18. In response to Request No. 18, defendants admit the truth of said fact and further state that the average number of pupils per classroom today is 27 and when members of the white race were also attending the public schools of Taliaferro County, the average number of pupils per classroom was 25.

19. The response to Request No. 19 is essentially the same as to Request No. 18.

20. In response to Request No. 20, defendants deny the truth of said request and state as a basis of their denial that today the Board of Education of Taliaferro County employs a full-time band director who is a specialist and that during the time that there were so-called white or Caucasian children in attendance, the Board of Education did not employ a so-called specialist but did employ a part-time college student who gave instruction in music.

**Answer of Defendants W. W. Fouche, Rastus Durham
and Elmo Bacon to First Interrogatories of Plaintiffs**

A. Answers of Elmo Bacon:

1. Elmo Bacon, Route 1, Crawfordville, Georgia, race white, occupation truck driver.

2. No.

3. No.

4. I have never served on a grand jury.

5. I have never served on a grand jury.

6. No answer required.

7. No answer required.

8. No.

9. I do not know.

10. To my knowledge I do not know of any white children attending the public schools of Taliaferro County, Georgia.

11. I do not know.

B. Answers of Rastus Durham:

1. Rastus Durham, Crawfordville, Georgia, race white, occupation Georgia State Highway Foreman.

2. Yes.

3. I have never been on a grand jury other than this one.

4. In August 1967, I remember there were two on the jury but I can only remember one name, Willie James Hughes.

5. Yes.

6. The Chairman of the Grand Jury said that a vacancy on the Board of Education existed and asked for nominations for persons. Dillard Noggles was nominated and someone seconded the nomination. The Chairman then asked for more nominations and everyone remained silent. A vote was taken and the Chairman asked that all in favor of Dillard Noggles raise their hand. As I recall, all present raised their hand.

7. I have only served one time and Dillard Noggles was elected, his address is Sharon, Georgia, race white, and his occupation is that of a mechanic. This was in 1967.

8. I have moved to Greene County, Georgia, since I served on the Grand Jury and I have one daughter named Wanda Durham who is sixteen years of age and is now attending Greene County School System.

9. To my knowledge I have never known one to serve.

10. To my knowledge there is none.

11. I do not know the answers to any part of this question.

C. Answers of W. W. Fouche:

1. W. W. Fouche, address, Crawfordville, Georgia, race white, occupation, barber.

2. No.

3. Yes, I served as a Grand Juror in 1965 and several times prior thereto, the exact dates being unknown.

4. In 1965 I was a Grand Juror and two negroes, namely Toomis Lewis and Garnett Moore, served with me.

5 and 6. Yes, the Chairman of the Grand Jury made known that there was a vacancy to be filled on the Board of Education. He stated that nominations were in order and one of the members of the Grand Jury nominated Cranston Jones. This nomination was seconded by another member of the Grand Jury. The Chairman asked several times if anyone else would make another nomination and everyone remained silent. He then asked for a vote and Cranston Jones received the vote of all members of the Grand Jury who were present in the room.

7. 1965, Cranston Jones whose address is Robinson, Georgia, race is white and occupation is a clerk. In some prior year unknown to me, I can remember being a member of the Grand Jury when Mrs. Willie Mae Fambrough was elected to the Board of Education of Taliaferro County, Georgia. I cannot recall whether or not there was more than one nomination but to my knowledge the election was held in the same manner as described in question 6.

8. None.

9. To my knowledge, there has never been a negro who served.

10. To my knowledge, there are none.

11. I have no knowledge of who is on the Grand Jury list of Taliaferro County except to the best of my knowledge I am on the list.

**Answer of Defendants Cranston Jones, W. A. Drinkard,
Carl Chapman, H. E. Williams, Jr. and Mrs. Willie
Mae Fambrough to Interrogatories of Plaintiffs**

In accordance with the Federal Rules of Civil Procedure, the aforesaid defendants answer the plaintiffs' interrogatories as follows:

1. (a) Wiley Cranston Jones, Route 2, Union Point, Georgia, 57 years old, employed as a clerk in Lunsford's Department Store, white, male;

(b) W. A. Drinkard is deceased; accordingly, no answer is filed for him;

(c) Carl L. Chapman, Crawfordville, Georgia, age 52, auto mechanic, white, male;

(d) Horace E. Williams, Jr., White Plains, Georgia, age 45, dairy farmer, white, male;

(e) Mrs. Willie Mae Johnson Fambrough, Route 1, Crawfordville, Georgia, age 62, housewife, white, female.

2. (a) Since August 30, 1965; served until I resigned as a member on June 30, 1966;

(c) Have been a member for about six years;

(d) Became a member on August 26, 1963, and served until I resigned in September of 1967;

(e) I will complete my thirteenth consecutive year of service as a member on March 2, 1968.

3. Those who have served on the Board of Education since 1964 and with whom any of the present members served are:

(a) A. J. Harper, Crawfordville, Georgia, deceased, was a farmer, white, male;

(b) J. O. Moore, Crawfordville, Georgia, farmer, white, male;

(c) Jack (J. G.) Veazy, Crawfordville, Georgia, farmer, white, male;

(d) Glenn Edwards, Crawfordville, Georgia, retired, white, male;

(e) Emerson Chew, Crawfordville, merchant, white, male;

(f) W. F. Dozier, Crawfordville, Georgia, (deceased), was a merchant, white, male;

(g) Milton Taylor, Robinson, Georgia, farmer, white, male;

(h) Carl Chapman, Crawfordville, mechanic, white, male;

(i) Horace Hill, Crawfordville, retired, white, male;

(j) Larry Veazy, farmer, white, male, Crawfordville;

(k) Moore Pittman, Crawfordville, merchant, white, male;

Mr. Veazy was appointed by the Board as was Mr. Pittman to succeed H. G. Williams, Jr. and W. A. Drinkard respectively in October of 1967.

4. No member of the Negro race served with any of us on the Board of Education.

5. We do not know of any.

6. (a) One who presently attends the twelfth grade of Jonesboro High School, Jonesboro, Georgia;

(c) None;

(d) Three, all of whom attend Greensboro High School, Greensboro, Georgia;

(e) None;

7. No white children presently attend the public schools of Taliaferro County, Georgia;

8. Better than 95% of all of the children who presently attend the public schools of Taliaferro County, Georgia, are bussed without charge to and from public school each and every school day;

9. The sole administrative employee of the Board of Education of Taliaferro County, Georgia, is Mrs. Lola H. Williams, County School Superintendent, whose race is White;

10. The answer to this question appears as Exhibit A attached hereto.

11. One to twenty-seven.

12. One to twenty-five.

13. According to the latest financial report dated June 1967, the per pupil expenditure is \$434.82.

14. \$322.76.

15. Mr. John Ruth, band director, is the specialist now employed in the public schools of Taliaferro County, Georgia.

16. Only a part-time band instructor, a University of Georgia student, was employed in 1964.

17. There are presently 8.7 library books per public school student.

18. In 1964 there were five library books per public school student.

19. Four years.

20. Four years.

22. Yes; \$63,000.00 for the school year 1967-1968.

23. Yes; the public schools of Taliaferro County, Georgia, like all other public schools in the State of Georgia have received federal funds through the State Department of Education. Other than those funds, in 1966-1967 the public schools of Taliaferro County, Georgia received directly \$63,000.00 of federal funds.

24. Yes.

25. There are two public schools in Taliaferro County, Georgia—Taliaferro County Elementary School, grades 1 through 7 having an average daily attendance of Negro pupils of 283, and Taliaferro County High School, grades 8 through 12 having an average daily attendance of 175 Negro pupils.

26. \$267,611.65.

27. Ad Valorem taxes	\$ 39,000.00
State of Georgia Allotment	112,488.69
Transferred and Special Title I Funds	65,253.70
Liabilities carried forward for items such as withholding and social security	25,500.00
Money carried forward from previous years	22,500.00

28. Yes; no defendant answering these interrogatories has had any connection or association with said private school. Wiley Cranston Jones knows only that there are one through ten grades in said school; Carl L. Chapman knows nothing about said school; Mrs. Willie Mae Frambrough knows nothing about said school and Horace E. Williams knows that the school is named Crawfordville Baptist School, its address is Crawfordville, Georgia, it has the first through tenth grades, approximately seventy-two pupils attend the entire school, how many attend each grade is not known, all of the pupils of this private school are of the white race.

29. Not the first penney has been contributed to any such private school within Taliaferro County.

30. (a) Wiley Cranston Jones, 607 GM;
 (b) W. A. Drinkard did live in 172 GM;
 (c) Carl Chapman, 603 GM;
 (d) H. E. Williams, Jr., 608 GM;

(e) Mrs. Willie Mae Frambrough, 604 GM;

31. Eighteen teachers.

32. Thirty-three teachers.

33. Each active member of the Board of Education receives a total of \$20.00 per month.

34. The Board of Education meets regularly once each month.

35. Yes, at 10:00 A. M. on the first Tuesday in each month in the office of the County School Superintendent, Taliaferro County Courthouse, Crawfordville, Georgia.

36. Yes.

37. Yes.

38. We have met at the regular meeting time every month since September 1, 1967.

39.

40. As required by the laws of Georgia, public notice has been given in the county newspaper, the *Advocate-Democrat* of the regular meeting time, date and place. Notice of each particular meeting is not given.

41. Johnny Warren, Sparta, Georgia, Negro.

W. H. Teddleton, Crawfordville, Georgia, Negro.

42. The Board of Education, upon recommendation of the Superintendent.

43. Mrs. Lola H. Williams, Crawfordville, Georgia,
white.

44. (a) One—attended ninth grade;

(c) None;

(d) Yes—fifth, seventh and eighth grades;

(e) None.

EXHIBIT "A" ANNEXED TO ANSWERS OF
DEFENDANTS JONES, ET AL.

PRESENT TEACHER ENROLLMENT

Teacher	Race	Address	Four Year College Degree From:
M. Chatman	Negro	Crawfordville, Ga.	Savannah State
J. Cheely	Negro	Crawfordville, Ga.	Savannah State
J. Warren	Negro	Crawfordville, Ga.	Savannah State
C. W. Williams	Negro	Crawfordville, Ga.	Savannah State
A. Ellington	Negro	Crawfordville, Ga.	Savannah State
M. Hackney	Negro	Crawfordville, Ga.	Savannah State
R. Cheely	Negro	Crawfordville, Ga.	Savannah State
M. Mattox	Negro	Crawfordville, Ga.	Savannah State
M. Moss	Negro	Crawfordville, Ga.	Savannah State
F. Nichols	Negro	Crawfordville, Ga.	Savannah State
W. Watson	Negro	Crawfordville, Ga.	Albany State
W. Kennedy	Negro	Crawfordville, Ga.	Allen University
U. Evans	Negro	Crawfordville, Ga.	Clark College
R. Marion	Negro	Crawfordville, Ga.	Benedict
L. Davis	Negro	Crawfordville, Ga.	Benedict
J. D. Ruth	Negro	Crawfordville, Ga.	Albany State
M. Alexander	Negro	Crawfordville, Ga.	Atlanta University
W. Teddleton	Negro	Crawfordville, Ga.	Albany State
R. Williford	Negro	Crawfordville, Ga.	Florida State

Jury Lists

GRAND JURORS 1967

GEORGIA, Taliaferro County;

In accordance with order passed by Judge Robert L. Stevens, on the 3rd day of April, 1967, directing the Jury Commissioners of Taliaferro County to meet and revise both Grand and Traverse Jury Lists, in compliance with the existing laws relative thereto, as soon as practicable, said Jury Commissioners hereby certify that they met on the 18th and 19th days of April, 1967, in called session, pursuant to the above order and have revised the Jury Boxes, both Grand and Traverse, and further certify that the tickets containing their names have this day been placed in the Grand Jury Box.

J.W.Archison	Edgar W Chew,
J.W.Andrews	W.O.Chapman
Arthur D Brown	W.R.Chapman
R.A.Bedgood	Earl Chapman
Paul Bird	B.R.Darden
C.E.Bonner	Pat H Darden
Geo.W.Brown	K.Willie Dye
Gwin Bird	Rastus Durham
Geo.H.Brown	L.R.Dozier
Guy Beazley	Eulous Dotson
Willie Billingsly	J.P.Ellington,Jr
Melvin L. Cox	Loyd W Echols
J.W.Clemmons	L.B.Edwards
George L.Clemmons	Willie George Edwards
J.P.Crawford	R. O. Edwards
H.Hayes Chew	L.A.Edwards

J.D.Edwards
 Dwellie Evans,
 Roosevelt Ellington
 Wales T Flynt
 Jesse W. Flynt
 Richard Fowler,
 W.W.Fouche
 Richard H Flynt,
 George Fambrough
 Mark Greene
 Sam D. Greene
 Clarence Griffith
 Charles W Greene
 T.C.Harrington,
 B.L.Hollis
 C. J.Hill
 Wm. J.Hall
 Jack H Hubert
 Ernest Godbee
 Cecil Hunter
 W.J.Hughes
 Miles Hackney
 H.F. Johnson
 Warren Y.Johnson
 Reuben H. Jones
 Eulous Harris
 Rev. Floyd T. Jenkins
 W. Cranston Jones.
 Roger M. JONES
 William H.Jackson
 Thos/Irby Jackson
 Hill B.Jackson
 Lewis B.Kendrick

Terrell Lyle
 Fred Lunceford
 Louis Lunceford
 Owens V Lunceford
 Hawes Lunceford
 David Lindsey
 H.A.Morrow
 Earl H Lucas
 Robert Morris
 Frank Mitchell III
 F.G.Mitchell Jr
 Eulous C Moore
 J.Owen Moore
 Henry G. Moore Jr.
 W.W.Moore
 W.E.Meadows
 Carson Monerief
 Nathaniel Mapp
 Garnett M.Moore
 Robert Maltbie
 T.F.Mulkey
 T.Girdwood Macfie
 Wm. N. Noggle
 Joe D Noggle
 Mitchell Noggle
 W.E.Neal
 Emory Neal
 Joe Ogletree
 Jack Pittman
 J. C. Pierce
 J.A.Poss
 E. W.Reynolds
 Joe C Rhodes

W.R.Rhodes Sr
HenryS Rhodes
W.H.Rhodes
Foster Rhodes
Marvin H.Rhodes
Horace C Rhodes
Jack Sturdivant
Gordon A Sherrer
Oscar C Stewart
Dennis Sanders
Lonnie Stewart
Colon S Stewart
Genever B Stewart
James Milton Taylor
William Glenn Taylor
Alonza Taylor

Ollie Taylor
Omer Taylor
Marvin Taylor
Wilbur C Taylor
Ralph B.Taylor
John G. Veazey
Larry Veazey
Marvin Veazey
J.Veazey Wynne
M.M.Wheeler
E.L.Williams
H.R.Williams
Cohen Wright
Troy H. Vickers
James Yearwood
George Williams Jr.

CERTIFICATE.

GEORGIA, Taliaferro County;

We the undersigned Jury Commissioners of Taliaferro County and the Clerk of the Superior Court of said County acting as Clerk of said Board, do hereby certify that the foregoing two pages contain a true and correct list of persons selected by the said Jury Commissioners to serve as GRAND JURORS, and we further certify that the tickets containing their names have this day been placed in the Grand Jury Box, and Box sealed according to law.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this April 19, 1967.

E. C. MOORE, Jury Commissioner
Guy F Beazley, Jury Commissioner
J. M. Taylor, Jury Commissioner

ATTEST

Ralph W. Golucke, Clerk Superior Court acting as Clerk of said Board.

L.T.Lunceford Jury Commissioner
Clarence Griffith, Jury Commissioner

Georgia, Taliaferro County;

I, Ralph W. Golucke, Clerk of the Superior Court in and for the County of Taliaferro, hereby certify that the within and foregoing two pages, contain a true and correct copy of Grand Jury List, 1967, of said County, as the same appears of record in Jury Book B, pages 194/195, in the office of the Clerk of the Superior Court of said County.

Given under my hand and seal of office, this 15th day of January, 1968.

/s/ RALPH W. GOLUCKE
Clerk Superior Court
Taliaferro County, Ga.

TRAVERSE JURORS 1967.

GEORGIA, TALIAFERRO COUNTY:

In accordance with order passed by Judge Robert L. Stevens, on the 3rd day of April, 1967, directing the Jury Commissioners of Taliaferro County to meet and revise both the Grand and Traverse Jury Lists, in compliance with the existing laws relating thereto, as soon as practicable, said Jury Commissioners hereby certify that they met on April 18th, and April 19th, 1967, in called session, pursuant to the above order, and have revised the Jury Boxes, both Grand and Traverse, and further certify that the tickets containing their names, have this day been placed in the TRAVERSE JURY BOX.

E. D. Ansley	Guy F Neazley
J. W. Atchison	Willie Billingsley
B. B. Atchison	Joel M. Casper
Charles Atchison	Melvin L. Cox
Wallace Andrews	J.W.Clemmons
Jimmie Andrews	Geo L. Clemmons
Alvester Armstrong	J.P.Crawford
Luther Armstrong	H. Hayes Chew
Arthur D. Brown	Edgar W.Chew
R.A.Bedgood	W.O.Chapman
Willie G.Bird	S. W. Chapman
Paul Bird	W.R.Chapman
C. E. Bonner	Carl Chapman
George W.Brown	J.A.Clements
Glinn Bird	Earl Chapman
George Harris Brown	J.S.Callaway
Elmo Bacon	DorseyCombs,

L.E.Oradillo
 W. A. Drinkard
 K.Willie Dye
 W. H. Davis
 Rastus Durham
 B. R. Darden
 George Darden
 Pat H Darden
 L.R.Dozier
 Roy Dozier
 Dock Davis Sr
 EulousDotson
 J.P.Ellington,Jr
 Loyd E.Echols
 Connie R. Edwards
 Willie George Edwards
 Ralph O.Edwards
 Gary Edwards
 Thomas F.Edwards
 Brewer Edwards
 Wilson Edwards
 J.D. Edwards
 Colelough Evans
 J. R. Evans
 Preston D Edwards
 Dwellie Evans
 Roosevelt Ellington
 Garnett Evans
 Wales T Fkynt
 Jesse W.Flynt
 Jimmie Purks Flynt
 John L. Flynt,
 Richard Fowler

Gray Fowler
 Floyd Freeman
 Grover Frazier
 W. W. Fouche
 Richard H. Flynt,
 George A. Fambrough
 Henry N.Fouche
 Paul Gunn
 Mark H.Greene,
 Sam D Greene
 Charles W.Greene
 Clarence AGriffith
 William Grant,
 Ernest Godbee
 C.J. Hill
 H.W.Hill
 B.L.Hollis
 Alvin S Harwell
 J.W.Harrison
 T.C.Harrington
 Wm.J.Hall
 Jack Hubert
 Dock Harrison
 G.W.Hunter
 Cecil Hunter
 Manuel Hunter
 Aubrey Harris
 Felix House
 C.M.Harris
 Eulous Harris
 Willie J.Hughes
 Miles Hackney
 O.W.Irvin

M.L.Johnson
 H.F.Johnson
 Warren Y.Johnson
 Aubrey Johnson
 Reuben H. Jones
 W.M.Jones Jr.
 Rev.Floyt T.Jenkins
 J.C.Jordan
 W. Cranston Jones
 Roger M.Jones
 Geo.M.Jackson
 Wm.H.Jackson
 Hill B.Jackson
 Thos.Irby Jackson
 Lewis B. Kendrick
 Harold H Kendrick
 Vincent A.Kealey
 Julian Kendrick
 J.C.Lyle
 Terrell Lyle
 Victor C Linten
 Fred Lunceford
 Louie Lunceford
 Owens V.Lunceford
 Hawes Lunceford
 Earl H Lucas
 D.A.Lyle
 David Lindsey
 Tommie Lewis
 H.A.Morrow
 Robert Morris
 Carson Moncrief
 Walter G. Melson

F.G. Mitchell Jr
 Frank Mitchell III
 Jack H.Mitchell
 Eulous Moore
 Jamie A.Moore
 J.Owen Moore
 R.Edward Moore
 A.D.Moore Jr
 Henry G Moore Jr
 W.W.Moore
 W.E.Mwadows
 Garnett M.Moore
 Nathaniel Mapp
 Europe Manago,Sr.
 Howard E.Miller
 T.F. Mulkey
 Robert F.Maltbie
 Timmie H.Moore
 Ralph McAvoy
 James F McNair
 T.Girdwood Macfie
 F.B.Merritt Jr
 Mitchell Noggle
 Joe D.Noggle
 William N.Noggle
 J.D. Nash
 W. E. Neal
 Emory Neal
 Bobby K.Neal
 Kenneth Nunn
 Billie K.Neal
 Raymond Nox
 Joe Ogletree

Hal S.Ogletree	BoyceSmith
W. A. Owens	Otis Simons
Jack Pittman	Thomas Simons,
J.C. Pierce	Leonard Shelton
L.O.Macbeth	Emmett A.Taylor
J.A.Poss	J.Louis Taylor
Patrick S.Pate	J.Milton Taylor
Babe Reese	Dennis Sanders
John Reese	Horace Stewart
Foster Rhodes	Henry Stewart
Luke Rhodes	John Shorter
Marsby Reid	Lonnie Stewart
Marvin H Rhodes	Dock Stewart
Henry S Rhodes	Clarence Sherrer
W.W.Rhodes Sr.,	William Glenn Taylor
Joe C Rhodes	Robert Alonze Taylor
Ray Rhodes	Ollie Taylor
Horace C Rhodes	Ralph B.Taylor
Clinton Rhodes	Wilbur C.Taylor
Bobby Rocker	Omer Taylor
E.W.Eeynolds	E.Marvin Taylor
Otis Ray	James M.Taylor
Herbert Rhodes	Ernest B.Turner
Horace Lee Rhodes	Raymond Turner
George Angus Richards	J.W.Thaxton Sr.
Harold R Stewart	J.W.Thaxton Jr
Jack Sturdivant	Jack G Veazey
Goreon Sherrer	Marvin L.Veazey
Chas. I. Swann	Larry Veazey
Oscar C Stewart	Troy H Vickets
James H Stewart	John W.Wynne
Genever B .Stewart	W.E.Watson
Colon S Stewart	M.M. Wheeler

H.E.Williams Sr
 Horace E Williams Jr.
 E.L.Williams,
 H.H. Williams
 George Williams Jr.
 Cohen Wright
 Lithier A.Wright
 L.E.Williams
 C.T.Woodruff
 James Yearwood,
 Rudopf Yearwood
 Joe M.Turner
 Jim Ware
 Mrs. E. D. Ansley
 Clarice Armstrong
 Willie C .Armstrong
 Mrs.George W. Brown,
 Miss Josie Bird
 Mrs.C.E.Bonner
 Mrs. W. G. Bird
 Minnie Lee Bailey
 Elizabeth . Bird
 Essie Boone
 Mrs.Grace Beazley
 Mrs.Carl Chapman
 Mrs.Helen S Chapman
 Mrs.Annie Cox
 Mrs. Mary (Pat) Darden
 Ruth Dooley
 Mrs.Helen Bedgood Dozier
 Ollie B.Dynn
 Mrs.L.R.Dozier
 Annie B Ellington

Mrs,J.P.Ellington,Jr
 Emma Evans
 Mrs.Pearl Fowler
 Mrs.Willie M.Fambrough
 Mrs.L.A.Edwards
 Mrs.Richard H Fkynt
 Mrs.Ethel Maude Flynt
 Mrs.Frances W Greene
 Mrs.NBarbara Griffith
 J.W.Harrison
 Margie Hughes
 George Hughes
 Mattie B.Hackney
 Mrs. Myra Jackson
 Mrs.Loudelle Johnson
 Mrs.Reba Harrington
 Mrs.Mary Agnes Lyle
 Mrs.Dorothy L.Linton
 Mrs.Carson Monerief
 Mrs.Louise Moore
 Mrs. W. W. Moore
 Emma Mapp
 Jessie Meadows,
 MrsRobert Morris
 Mrs.Shirley Nogglem
 Lilleie Mae Peek
 Mrs,Louise Patrick
 Sammie D Randolph
 Mrs,Lois Richards
 Mrs.Peggy N.Rhodes
 Mrs.Flora Swann
 Mrs.Vanilia P.Sales
 Clyde Sales

Willie Golden Stewart
 Mrs.Colon S Stewart
 Mrs.GordonSherrer
 Mrs.Blanche Sturdivant
 Mrs/Marie Taylor
 Mrs.Ralph B.Taylor
 Mrs.Doris Teddleton
 Mrs.Ernest B.Turner
 Florence Turner
 Wm.H.Teddleton
 Mrs.Robert Alinze Taylor
 Lucy Young
 Mrs.Patsy Moore Watson
 Winnie Lee Ware
 Miss Faye Wright

Buddell Ware
 Caesar Williams
 Mrs.J.Veazey Wynne
 Mrs.H.M.Wynne Jr
 Mrs.Owens Lunceford
 Mrs Cohen Wright
 Henry Horton
 Louis Patruck
 Haigler Shorter
 Wylie Chenault
 Bill Johnson
 Byron Stephens Sr
 William Henry Gunn
 Jessie Golatt
 W.H.Rhodes,

CERTIFICATE

GEORGIA, Taliaferro County;

We, the undersigned Jury Commissioners of Taliaferro County, and the Clerk of the Superior Court of said County, acting as Clerk of said Board, do hereby certify that the foregoing five pages contain a true and correct list of persons selected by the said Jury Commissioners to serve as Travers Jurors, and we further certify that the tickets containing their names have this day been placed in the Traverse Jury Box, and box sealed, according to law. IN TESTIMONY WHEREOF, we have herein set our hands and seals, this April 19th, 1967

E. C. Moore, Jury Commissioner
Guy F Beazley, Jury Commissioner
J.M.Taylor, Jury Commissioner
L. T. Lunceford, Jury Commissioner
Clarence Griffith, Jury Commissioner

Attest:Ralph W.Golucke

Clerk Superior Court, Taliaferro County, acting as Clerk of said Board.

Georgia, Taliaferro County;

I, Ralph W. Golucke, Clerk of the Superior Court of said County, hereby certify that the foregoing three pages is a true and correct copy of Traverse Jury list, of Taliaferro County, Ga.

Witness my hand and seal, this 15th day of January, 1968

Ralph W. Golucke
Clerk Superior Court

Motion to Intervene by State of Georgia

COMES NOW the State of Georgia and pursuant to Rule 24(b) of the Federal Rules of Civil Procedure moves the Court for leave to intervene as a defendant in this action in order to assert the defenses set forth in its proposed answer, a copy of which is attached hereto, on the ground that the complaint asserts that a constitutional provision of the State of Georgia, as well as certain statutes enacted by the General Assembly of said State, are violative of the United States Constitution. The State of Georgia has a self-evident interest in asserting the validity of its own constitution and statutory enactments, with such interest being expressly recognized by federal statute, to wit: 28 U. S. C. § 2284(2).

WHEREFORE, movant prays that this its motion to intervene be inquired into and sustained by the Court and that it be permitted to intervene as a defendant in the above styled action.

Order 65

The cause
the State of **Georgia to Intervene**
fendant, and
should be pe on to be heard on the motion of
leave to intervene as a party de-

ORDERED, Ag to the court that said movant
has leave to intervene as prayed, it is hereby:
party defen

This 22 d^o DECREED that the State of Georgia
this cause and is hereby made a
above styled action.

y 1968.

GRIFFIN B. BELL

United States Circuit Judge

LEWIS R. MORGAN

United States District Judge

FRANK M. SCARLETT

United States District Judge

Defenses and Answer of Defendant-Intervenor

FIRST DEFENSE

Defendant-intervenor moves that the three-judge Court heretofore convened in the above styled action be dissolved and the case remanded for consideration by a single district judge on the ground that the constitutional attacks which plaintiffs make upon a constitutional provision and various statutory enactments of the State of Georgia do not present a single substantial federal question, are colorable only and are made solely for the purpose of securing a three-judge district court.

SECOND DEFENSE

Defendant-intervenor answers plaintiffs' complaint as follows:

1.

Defendant-intervenor is without knowledge or information sufficient to enable it to form a belief as to the truth of the allegations of paragraphs 1 and 2 of the complaint.

2.

In answer to paragraphs 3, 4 and 5 of the complaint, defendant-intervenor is without knowledge or information sufficient to enable it to form a belief as to the truth of the factual allegations of said paragraphs. The allegations as to the manner and capacity in which the named defendants are being sued constitute legal contentions requiring no answer.

3.

While paragraph 6 of the complaint consists of legal conclusions which require no answer, defendant-intervenor expressly denies that federal jurisdiction can properly be predicated upon alleged facial unconstitutionality of the attacked constitutional provision and statutes of the State of Georgia.

4.

Defendant-intervenor denies the allegation of paragraph 7 of the complaint.

5.

Defendant-intervenor is without knowledge or information sufficient to enable it to form a belief as to the truth of the allegations of paragraphs 8, 9 and 10 of the complaint.

6.

In answer to paragraph 11 and the various subparagraphs thereunder, defendant-intervenor denies that the named defendants have chosen and threaten to continue to choose an all-white school board to superintend the all-black public schools of Taliaferro County pursuant to State constitutional provision or statutes. Answering the subparagraphs of said paragraph 11, defendant-intervenor says:

a. That the language of Article VIII, Section V, Paragraph I of the Constitution of the State of Georgia (Ga. Code Ann. § 2-6801) is correctly set forth in subparagraph (a) of paragraph 11 of the complaint but that Article VIII, Section V, Paragraph II (Ga. Code Ann. § 2-6802) further provides:

"Notwithstanding provisions contained in Article VIII, Section V, Paragraph I (§ 2-6801) of the Constitution, or in any local constitutional amendment applicable to any county school district, the number of members of a county board of education, their term of office, residence requirements, compensation, manner of election or appointment, and the method for filling vacancies occurring on said boards, may hereafter be changed by local or special law conditioned upon approval by a majority of the qualified voters of the county school district voting in a referendum thereon. Members of county boards of education shall have such powers and duties and such further qualifications as may be provided by law."

The allegation of said subparagraph (a) that Article VIII, Section V, Paragraph I of the Georgia Constitution is violative of the Fourteenth or Thirteenth Amendments to the United States Constitution is expressly denied by defendant-intervenor.

b. That Ga. Code Ann. §§ 32-902, 32-902.1, 32-903 and 32-905 are correctly quoted in subparagraph (b) of said paragraph 11 of the complaint but that it is denied that said statutory provisions are violative of the Fourteenth or Thirteenth Amendments to the United States Constitution as alleged by plaintiffs.

c. That Ga. Code Ann. § 59-101 is correctly quoted in subparagraph (c) of said paragraph 11 but that it is denied that said statutory provision is violative of the Fourteenth or Thirteenth Amendments as alleged by plaintiffs.

d. That Ga. Laws 1967, p. 251 (Ga. Code Ann. § 59-106) is correctly quoted in subparagraph (d) of said paragraph

11 but that it is denied that said statutory provision is violative of the Fourteenth or Thirteenth Amendments as alleged by plaintiffs.

7.

Defendant-intervenor is without knowledge or information sufficient to enable it to form a belief as to the truth of the allegations of paragraphs 12, 13, 14, 15, 16, 17 or 18 of the complaint.

8.

Defendant-intervenor denies the allegations of paragraphs 19 and 20 of the complaint.

THIRD DEFENSE

Answering plaintiffs' complaint further, defendant-intervenor shows the Court as follows:

1.

That the State constitutional provision and statutes attacked by plaintiffs set forth reasonable procedures for the selection of members of county boards of education, county jury commissioners and county grand jurors.

2.

That within the inherent limitations caused by the use of words rather than mathematical equations the standards for qualification and eligibility set forth in the attacked statutes are sufficiently clear and definite to permit persons of ordinary intelligence to administer the same in a fair and impartial manner.

3.

That said constitutional provision and statutes are on their face wholly devoid of racially discriminatory provisions and plaintiffs' contention of facial invalidity is without merit.

WHEREFORE, having fully answered and presented these its defenses to plaintiffs' complaint, defendant-intervenor prays that to the extent that plaintiffs seek an adjudication or declaration of the facial unconstitutionality or invalidity of the aforesaid constitutional provision and statutes of the State of Georgia, their prayers be denied and that the three-judge Court be dissolved with all remaining issues remanded for consideration by a single district judge.

Order Dismissing Defendant Grand Jurors

On motion of the defendants, the defendants W. W. Fouche, Rastus Durham and Elmo Bacon, individually and in their capacities as Grand Jurors of Taliaferro County, Georgia, are hereby struck as defendants.

So ORDERED, this 30 day of January, 1968.

GRIFFIN B. BELL

United States Circuit Judge

FRANK M. SCARLETT

United States District Judge

LEWIS R. MORGAN

United States District Judge

Motion to Intervene as Additional Parties-Plaintiffs

The following named adult and minor Negro citizens of the United States and of the State of Georgia, residing in the City of Crawfordville, Taliaferro County, Georgia, move the Court for leave to intervene as parties-plaintiffs for themselves and all others similarly situated:

Joseph Heath, father and next friend of Lois Catherine Heath (age 15), Helen Marie Heath (age 14), Leola Heath (age 12), Lynns Delton Heath (age 10), Linda Gail Heath (age 8), and Anna Laura Heath (age 5).

The grounds for this motion are:

1. Applicant, Joseph Heath, seeks leave to intervene herein in order to assert his claims under the complaint and the motions heretofore filed by the plaintiffs. Applicant is 54 years of age and is not a freeholder in Taliaferro County, Georgia.

2. Each of the minor applicants attend school in Taliaferro County, Georgia, operated by the defendant Board of Education, the members of which are elected by the Grand Jury of Taliaferro County, which in turn is selected by the Jury Commissioners of said County, pursuant to the constitutional provisions and statutes alleged and set forth in plaintiffs' complaint.

3. Applicants adopt the allegations and prayers contained in the complaint and motions heretofore filed by the plaintiffs herein.

WHEREFORE, applicants move for leave to intervene as parties-plaintiffs in this action.

Order

Upon consideration of the above and foregoing motion, the same is allowed and ordered filed, subject to motions and objections.

This 23 day of February, 1968.

GRIFFIN BELL

United States Circuit Judge

FRANK A. SCARLETT

United States District Judge

LEWIS R. MORGAN

United States District Judge

Report to the Court of Counsel for the Remaining Defendants

Toward the conclusion of the hearing in Augusta on January 23, Circuit Judge Bell stated from the bench:

"Now, on the main question, which is that there are no Negroes on the Board of Education. I don't know just what the Court can do about that, but I know that there is no one here that's a party defendant that would think that situation can continue. That just simply will not do. Now, how it can be worked out, I don't know. It is a bad thing in this country to call on the courts to solve all the problems. If you can govern yourselves, the citizens ought to solve some problems, and it may be that between now and the 23rd you can work out some way to solve the situation. There are two places, as I see it, on the School Board that have not been permanently filled. There are two men who have been elected by the school board but the grand jury hasn't confirmed them. If those two men would willingly stand aside the other members might select two outstanding Negro citizens who are land owners and good citizens to go on the Board. If you don't want to do that—I told you in the beginning that this was a pre-trial conference as well as a hearing, if you don't want to do that we will know that on the 23rd. If you can do that, it will be an act of statesmanship on the part of somebody who is able to get something like that done; but you all are living in the county together and some how another you are going to have to keep living in the county together, and you can't have an all Negro

school and all white school board, because somewhere along the line some court will do something about that. I guess this is the first case of this kind that has come up, but just by second nature almost to a judge now knows that that sort of thing can't continue, so the Court would hope that the citizens of Taliaferro County can solve these problems themselves, and that when we get down to Brunswick that we could terminate this matter by the grand jury list having been reconstituted and some relief having been granted to these Negro citizens about their schools. If they had somebody on the School Board they could get a hearing. You have got a right to get a hearing before any public official. And every Negro has got the same right, identical rights, as any white person before any officer of the law. We all know that. Now, we are going to leave the case in that posture, at that juncture, and set it over until February 23rd at 9:30 in Brunswick, and I hope by that time we will have the Taliaferro County situation worked out. Mr. Bloch you are a fine lawyer and an experienced man in this sort of thing and I think it is time for the people to work this out. There will be communication. All you need is for somebody to get in an office somewhere and you will have plenty of communication."

And, also:

"... but you will have to advise your clients what the law is on that, what is a legal composition of a grand jury, but the Court would hope that you would be generous in your composition."

Subsequently, on his own motion, on the 26th day of January, 1968, the Honorable Robert L. Stevens, Judge of the Superior Court of Taliaferro County, Georgia, promulgated an order reading as follows:

“Georgia, Taliaferro County;

“A Three Court Federal Court Tribunal, in a case involving the Taliaferro County Board of Education and the Taliaferro County Board of Jury Commissioners, et al. on the 23rd day of January, 1968, having orally ordered that the Traverse and Grand Jury Master Lists be revised in Taliaferro County, Georgia, it is Ordered as follows, to wit;

“That the Grand Jury of Taliaferro County, Georgia, drawn to serve at the regular February Term, 1968, of the Superior Court of said County be and they are hereby discharged from service at said Term of Court and the Sheriff of said County is ordered to not serve them to appear at said term of Court, it having been orally ordered by said Federal Court Tribunal that the Grand Jury Master List is improperly and unlawfully constituted;

“That the Jury Commissioners or Revisors of Taliaferro County, Georgia, revise both the Grand and Traverse Jury Lists for said County to comply with the oral pronouncement of said Federal Court Tribunal, the said lists heretofore composed being declared to be improperly and illegally composed. Said revision shall be made at the earliest and most convenient time.

"It is ordered that this order be spread upon the Minutes of the Court by the Clerk of said Superior Court.

"This the 26th day of January, 1968.

"Robert L. Stevens
Judge of Superior Court of
Taliaferro County, Georgia"

This order was filed in the office of the Clerk of the Superior Court of Taliaferro County on January 26, 1968, and recorded in the minutes of the Clerk of the Superior Court in Book L, page 57, on that date.

* January 26, 1968, was a Friday.

Having heard of the order, the Jury Commissioners consulted with their counsel in Macon practically simultaneously with its promulgation.

The Jury Commissioners met beginning on the Monday following the order, to wit, January 29, 1968. They had for their consideration the list of persons who were registered to vote in the last general election. That list contained a total of 2,152 names. We are advised that the Jury Commissioners considered each and every name in that list. When the Commissioners did not have any information with respect to a particular individual, they asked other people in the community about him or her. In particular, when they did not know about persons of the Negro race, they asked Negro people about them. In considering each and every name they eliminated the following numbers of names without regard to race for the following reasons:

Poor health and over-age	374
Under 21 years of age	79

Dead	93
Persons who maintained Taliaferro County as a permanent place of residence but were most of the time away from the county	514
Persons who requested to be eliminated from consideration	48
Persons about whom information could not be obtained	225
Persons of both the white and Negro race who were rejected by the Jury Commissioners as not conforming to the statutory qualifications for juries either because of their being unintelligent or because of their not being upright citizens	178
Names on voters lists more than once	33

This left a total of 608 names. Since 608 names are more than the Jury Commissioners deemed to be needed in the traverse jury box, they arranged these 608 names in alphabetical order, and took every other name on the list alternately and placed those names on the traverse jury list. This left a total of 304 names, and only then did the Commissioners look to see how many of these 304 names were those of Negroes and how many were those of whites. They determined that 113 were Negroes and 191 were white.

Their next task was to select not more than two-fifths of this traverse jury list for the grand jury list. They decided that the fairest system would be to draw names by lot. They drew a total of 121 names by lot and put those names

93

514

48

225

178

33

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After

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Courames of whites.

vide and traverse jury lists had just
Judge all the names had been put in

Ths, a new grand jury was drawn
the L. Stevens, Judge of the Superior
and ty, Georgia, in the manner pro-
who 32 grand jurors were drawn by
ferr were Negroes and 23 whites.

for ed on Friday, February 16, for
resi the regular business of the court
terr confirming or rejecting persons

Che Board of Education of Talia-
of I succeed Horace E. Williams, Jr.
Jur st 25, 1968, Mr. Williams having
bee Albert Drinkard, deceased, for a
Dri 1969.

Tro, had been chosen by the Board
Ed the next meeting of the Grand
tut who is of the white race, had
T of Education to succeed Albert
jur term expiring August 23, 1969.
ions, or choices by the Board of
by the grand jury, thus consti-
dance with the law.

serving consisted of 23 grand
hites and 6 Negroes.

ally submitted,

CHARLES J. BLOCH
Of Counsel for the
Remaining Defendants

SUMMARY

Names on the Voters List	2,152
Poor health and over-age	374
Under 21	79
Deceased	93
Persons who maintain Taliaferro County as a permanent place of resi- dence but spend most of the time away from that county	514
Requests not to serve	48
No information available as to	225
Rejected	178
Duplications	33
Total left for consideration	608
Placed on traverse jury list	304
Of whom 113 are Negroes and 191 white	
Placed on grand jury list	121
Of whom 44 are Negroes and 77 white	
Percentage of Negroes on traverse jury list	37%
Percentage of Negroes on grand jury list	36%
Percentage of Negroes on first grand jury drawn according to law by Judge Stevens	28%

Defendants' Exhibit 1

GEORGIA, Taliaferro County:

A three Judge Federal Court Tribunal, in a case involving the Taliaferro County Board of Education and the Taliaferro County Board of Jury Commissioners, et al. on the 23rd day of January 1968, having orally ordered that the Traverse and Grand Jury Master Lists be revised in Taliaferro County, Georgia, It is Ordered as follows, to-wit;

That the Grand Jury of Taliaferro County, Georgia, drawn to serve at the regular February Term, 1968, of the Superior Court of said County be and they are hereby discharged from service at said term of Court and the Sheriff of said County is ordered to not serve them to appear at said term of Court, it having been orally ordered by said Federal Court Tribunal that the Grand Jury Master List is improperly and unlawfully constituted;

That the Jury Commissioners or Revisors of Taliaferro County, Georgia, revise both the Grand and Traverse Jury Lists for said County to comply with the oral pronouncement of the said Federal Court Tribunal; the said Lists heretofore composed being declared to be improperly and illegally composed. Said revisions shall be made at the earliest and most convenient time.

It is Ordered that this order be spread upon the Minutes of the Court by the Clerk of said Superior Court

This the 26th day of January, 1968

ROBERT L. STEVENS

*Judge of the Superior Court of
Taliaferro County, Georgia.*

Georgia, Taliaferro County;
Filed in office, this the 26th day of January, 1968
RALPH W. GOLUCKE, *Clerk Superior Court*

Georgia, Taliaferro County
Recorded Minutes L. page 57, 26th day of Jan., 1968
RALPH W. GOLUCKE, *Clerk Superior Court.*

I hereby certify the above to be a true copy from the
Minutes of said Superior Court. This Feby 21, 1968

/s/ RALPH W. GOLUCKE
Clerk Superior Court
Taliaferro County, Ga.

Affidavit of Ralph W. Golucke

STATE OF GEORGIA

COUNTY OF TALIAFERRO

Personally appeared Ralph W. Golucke who, after being duly sworn, did depose and state that he is and has for 57 years been clerk of the Superior Court, Taliaferro County, Georgia. On February 8, 1968, he was present in the Superior Courtroom of Taliaferro County, together with Honorable Robert L. Stevens, Judge of the Superior Court of Taliaferro County, Honorable M. B. Moore, Sheriff of Taliaferro County and Harold F. Richards attorney of Taliaferro County. The Sheriff announced to all persons present that the Superior Court of Taliaferro County was then in session. The sealed grand jury box was delivered by him as clerk to the Judge of the Superior Court. He saw Judge Stevens break the seal on the grand jury box, saw the Judge unlock the box and watched the Judge draw names from the grand jury box. As each name was drawn by the Judge, the name was shown to deponent and to the Sheriff and the names, in the order drawn, were placed by deponent on the attached list entitled Taliaferro Superior Court Grand Jurors.

Prior to the time that the Grand Jury was impaneled, Judge Stevens excused the following persons: Mrs. F. G. Mitchell, Jr., J. S. Callaway, B. R. Darden, Marvin H. Rhodes and Mrs. Madison Taylor. By each of their names I put "Ex RLS" to indicate excuse prior to court. At the time that court convened, Judge Stephens in open court excused Grand Jurors Toomie Lewis, Mrs. Lois Tuggle,

Mrs. Mary Bates and Willie J. Hughes. I wrote "Ex" by each of their names to so indicate. Of the names that were thereafter left on the Grand Jury list, the first twenty three were selected and impaneled as the Grand Jury of Taliaferro County for the February 1968 term.

This 11 day of March, 1968.

RALPH W. GOLUCKE

(Sworn to March 11, 1968.)

LIST OF GRAND JURORS ANNEXED TO AFFIDAVIT OF RALPH W. GOLUCKE

TALIAFERRO

Superior Court.

GRAND JURORS

SPECIAL FEBRUARY

Term. 19 68, by

Drawn for

in the Superior Court Room of said County, in open Court. Judge of said Court,
on 8th day of February, 19 68

GRAND JURORS.

- | | | |
|--|---------------------------------------|---------------------|
| 1 Rev. Garnett M. Moore | 14 Miles Hackney | 31 Mrs. Mary Bates |
| 2 Willie George Edwards | 15 George Williams Jr | 32 Willie V. Hughes |
| 3 Mr. F. J. Mitchell Jr. Ex RLS | 16 Mr. Darden Ex RLS | |
| 4 Bulous Dotson Jr | 16 H. G. Moore Jr. | |
| 5 Wellie Ware | 17 Marvin H. Rhodes Ex RLS | |
| 6 Mrs. Pat Pate | 17 M. M. Wheeler | |
| 7 Charles V. Schuff | 18 G. P. Stewart | |
| 8 George A. Pambrough | 18 Owens V. Luncford | |
| 9 Mrs. Shirley Noggle | 19 K. W. Dye | |
| 10 W. R. Rhodes Jr | 20 Mrs. Gertrude Hatney | |
| 11 Jas. Sturdivant | 21 Otis Simons | |
| 12 Thompson S. Chew | 22 Charles W. Greene | |
| 13 J. S. Galloway Ex RLS | 23 Toomie Lewis | |
| 14 Horace C. Rhodes | 24 Mrs. Lois Tugale | |
| 15 Nathaniel Mapp | 25 Mrs. Madison Taylor Ex RLS | |

TRAVERSE JURORS—FIRST WEEK.

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| 21 | 45 |

Robert L. Stevens
J. S. C. T. C.

85

**List of Grand Jurors Annexed to Affidavit of
Ralph W. Golucke**

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3	27
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Georgia, Taliaferro County

To the Sheriff of said County:

You are hereby commanded to summon the persons whose names appear in the foregoing Panels, to be and appear at the Superior Court, to be held in and for said County, on the 16th day of February, 1968, next, at 10 o'clock A. M. of that day, to serve as Grand ~~RECEIVED~~ Jurors at the Special Feb Term, 1968, of said Court, they having been duly drawn according to law, and have you then and there this precept, with your return thereon as to how you have executed the same. Merwin fall not.

Witness the Honorable Robert L. Stevens Judge of said Court, this 8th

day of February, 19 68

Ralph W. Golucke Clerk

Taliaferro Superior Court.
Drawn for
February Special Term, 1968
VENIRE FACIAS

LIST OF GRAND JURORS DRAWN TO
SERVE FEBRUARY SPECIAL
TERM, Feb. 16, 1968

Georgia, Taliaferro County
Filed for record this 8th day of February 1968 at M.
Ralph W. Golucke
Clerk Superior Court

GEORGIA, TALIAFERRO COUNTY
Record & Minutes Page 1568
Filed by Clerk of Court
Ralph W. Golucke
Clerk Superior Court

Report to the Court in Behalf of Defendant Jury Commissioners

On February 23, 1968, based upon information furnished by defendant Jury Commissioners, defendants' attorney Charles J. Bloch submitted a report to the court of the revision of the Traverse and Grand Jury lists of Taliaferro County in response to the January 26, 1968, order of Honorable Robert L. Stevens, Judge of the Superior Court of Taliaferro County. During the hearing of this case on that same date the court asked additional questions about the revision of the Traverse and Grand Jury lists. That additional information as furnished to defendants' attorneys, and as in some respects corrected, is as follows:

The Jury Commissioners of Taliaferro County met beginning Monday, January 29, 1968. They had for their consideration the 1966 list of qualified voters of Taliaferro County, a copy of which is attached as Exhibit A, which contains 2,252 names instead of 2,152 names as previously reported. In the manner already reported each and every name on the voters list was considered and the following numbers of names were eliminated without regard to race for the following reasons:

Under 21 years of age	81
Dead	94
Persons who requested to be eliminated from consideration	43
Persons about whom information could not be obtained	226
Persons who were rejected for the following principal reasons:	
(a) Poor health and/or old age	482
(b) Away from the county most of the time	533
(c) Miscellaneous	179
(d) Elected officials and then known dupli- cations	8
TOTAL NUMBER ELIMINATED	1,646

Six hundred and six names remained. Since 606 names are more than the Jury Commissioners deemed to be needed in the traverse jury box, they arranged the remaining names in alphabetical order using slips of paper which, in some instances, showed the names of husbands and wives on the same slip. The Jury Commissioners took every other name alternately and ended up placing 304 names on the traverse jury list. They do not know how they got 304 instead of 303 names. Attached as Exhibit B is the traverse jury list. From the names on the traverse jury list, 121 names were drawn by lot and put on the grand jury list, a copy of which is attached as Exhibit C.

After the February 23, 1968, hearing, the Jury Commissioners re-examined and looked at the said registered voters list and prepared, to the best of their recollection, a typewritten list of each and every category of eliminated names as herein recited and to the best of their knowledge

put a dot to the left of the name of each person who is a member of the negro race. Those lists are attached and they show:

Exhibit	Category	Total Number of Names	Negro Names
D	Under 21	81	71
E	Dead	94	Unknown
F	Requested	43	2
G	No Information	226	Unknown
H	Poor health and/or old age ..	482	191
I	Away	533	263
J	Miscellaneous	179	167 •
K	Elected Officials and then Known Duplications	8	—0—
L	Not Alternately Selected	302	106

After the February 23, 1968, hearing, defendants also put a dash by the side of each name on the traverse and grand jury lists that to the best of their knowledge and belief is the name of a person of the negro race. Those marks are on Exhibits A and B.

Respectfully submitted,

WILBUR D. OWENS, JR.,
Of Counsel for Defendants

Responsive Pleading of Remaining Defendants

Defendants W. W. Fouche, Rastus Durham and Elmo Bacon were previously stricken and dismissed as defendants. The remaining defendants subject to all motions, objections and pleadings heretofore filed and otherwise made, file these their responsive pleadings:

DEFENSES

Every defense made by motion, pleading, objection or otherwise is incorporated herein by reference the same as if fully stated herein.

ANSWER

1.

Answering paragraph I, defendants admit all but the last sentence of A, 1 and 2 and that sentence they deny. Because of the dismissal of defendants Fouche, Durham and Bacon an answer to B, 3 is not required. Answering B, 4 defendants admit only that defendants Chapman and Fambrough are white Taliaferro County, Georgia citizens elected as provided by law as members and serving as members of the Taliaferro County Board of Education; further answering defendants state that W. A. Drinkard is deceased and defendants Jones and Williams were not members of the said board of education at the time this complaint was filed; the remainder is denied. Answering B, 5 defendants admit all but the last sentence and that is denied.

2.

Answering II defendants deny paragraphs 6 and 7.

3.

Answering III defendants deny paragraphs 8, 9, 10 and 11; deny the first sentence of paragraph 12 and admit the remainder of said paragraph; for want of information neither admit nor deny paragraphs 13, 14, 15 and 16; and deny paragraphs 17, 18, 19 and 20.

4.

Defendants demand a trial by jury.

5.

Defendants particularly demand a trial by jury as to the issue made by this responsive pleading and the averments of paragraphs 18 and 20 of the complaint.

6.

If Title 28, Section 2281 of the United States Code and Title 28, §2284 of the United States Code are construed to permit a plaintiff or plaintiffs to procure ancillary damages or monetary damages of any nature without a trial by jury, then defendants aver that those sections are violative of the Seventh Amendment to the Constitution of the United States which provides: "In suits at common law, where the value in controversy shall exceed \$20.00, the right of trial by jury shall be preserved, and no fact tried by a

jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law," for that any action for the recovery of monetary damages by whatever name called is an action "at common law" within the meaning of the aforesaid Seventh Amendment to the Constitution of the United States.

WHEREFORE, defendants pray that the plaintiffs have nothing and that all costs be taxed against plaintiffs.

Transcript of Proceedings**(January 23, 1968)**

[2] Judge Bell: Before we take up the case of Turner vs. Fouche and others, Civil Action No. 1357, I will ask if there are any motions from the Gentlemen of the Bar. I had some notice, or a letter, I believe it was, that somebody was going to make a motion in the case of Bennett vs. Evans.

[7] Judge Bell: All right, now, we will take up Turner against Fouche. The first thing we will do, on the motion of the State to intervene under Rule 24(b) on the basis they have an interest in the constitutionality of their own statutes and they want to defend them, and that will be granted Mr. Evans. You can prepare an order allowing your intervention, you being made a party defendant, you are intervening as a party defendant.

Now, Mr. Bloch, we have really three motions, although one of them is split up—there are more than that because we [8] have got many different defendants, but one is to dissolve the Three Judge Court. One is a motion to dismiss, I believe, and one is to be more specific, and I have forgotten what the other is. Let me say this: We want to get the facts stipulated today. We are not only going to hear the motions, but we are going to sorta conduct a pre-trial conference and get all the facts stipulated. Do you think it would be more orderly to argue your motions first? I suppose it would be because you have a right actually to have these motions argued first.

Mr. Bloch: I have no preference, Your Honor, whichever way the Court prefers. If you want to stipulate the

facts and have the things argued together, or if you want to take up the motions first it's all right with us. We have no preference. It is a matter for the Court to determine.

Judge Bell: What do you say, Mr. Moore?

Mr. Moore: Your Honor, we think it will be better to hear the evidence. We don't think it is going to take more than about an hour to hear the evidence. We have made pretrial discovery, and we are going to offer—

Judge Bell: Well, it maybe you won't have any evidence after we stipulate the facts.

Mr. Moore: Well, perhaps so, and I would estimate that we would need perhaps fifteen or twenty minutes to put on the testimony.

Judge Bell: Well, if you are going to put on testimony [9] Mr. Bloch has a right to argue his motions first. We had better hear the motions first then.

Mr. Moore: Yes, sir.

Judge Bell: Are you going to argue, Mr. Bloch, or is Mr. Owens going to do the arguing?

Mr. Bloch: I am going to start off.

Judge Scarlett: Have you changed your mind, Charlie?

Mr. Bloch: I couldn't hear you, Judge.

Judge Scarlett: You told me that you were going to let Owens argue it.

Mr. Bloch: I told you that I was going to start off and then let him bat.

Judge Bell: All right, suppose you go right ahead.

Mr. Bloch: If the Court please, as Judge Bell indicated in his statement awhile ago, there are motions pending.

Judge Bell: Mr. Marshal, is there a lectern around here somewhere that he can rest his papers on?

The Marshal: I don't believe so, Judge.

Judge Bell: Would it help you, Mr. Bloch, if you used part of the clerk's desk there?

Mr. Bloch: Thank you, that would help very much.

Judge Bell: All right.

Mr. Bloch: As to the motions which we have filed are those stated by Your Honor earlier, and the one that was omitted [10] in the statement, I think, was a motion under Rule 12(b)(1) and 12(b)(2) and the motion with respect to whether this is in reality in law a class action.

Judge Bell: A class action, that's right.

Mr. Bloch: That's the other one. Now, sometime ago, two or three weeks ago, counsel for the defendants had an official notice from the Clerk that the Court desired that a memorandae be filed in support of the motion and we assume served on the other side.

Judge Bell: Yes.

Mr. Bloch: So those memorandae were filed sometime ago, a couple of weeks ago, ten days or so ago and a copy sent to opposing counsel immediately.

Judge Bell: The memorandae were received.

Mr. Bloch: Now, we have not received anything from opposing counsel.

Judge Bell: I thought I saw him hand a batch of papers up here this morning.

Mr. Bloch: I was going to say until about five minutes ago, there was filed and served upon us a document called "Trial Brief", I think it is, "Plaintiff's Trial Brief", which I have not had an opportunity to even read much less to seek to reply to; but I have no desire to argue extensively the motions which have been filed. I have no desire to be talking just to be talking, when it has been covered fully, I think, by the memorandum which has been submitted to the Court.

[11] Judge Bell: Well, I think you would be justified in relying on your brief. We have read the brief.

Mr. Bloch: With that I have no desire to argue it extensively, but of course if he argues responsively—

Judge Bell: —I think probably Mr. Moore wants to respond to the brief, particularly in view of the fact we have not had an opportunity to read his brief, he will probably want to respond. You can rest on your brief, if you want to.

Mr. Bloch: I will do that.

Judge Bell: All right. Mr. Moore, do you want to say something, or you Mr. Owens?

Mr. Owens: I will wait until later.

Judge Bell: All right, Mr. Moore, who is leading counsel on your side?

Mr. Moore: I am.

Judge Bell: All right, do you want to be heard on this.

Mr. Moore: Your Honor, I would like to say—

Judge Bell: —Do you want to come up here where we can hear you better?

Mr. Moore: The facts of his motion to dissolve the Three Judge Court because it is jurisdictional in nature, I would like to make the following observation: The complaint does state a substantial federal question as to the constitutional validity of these statutes, these various statutes.

[12] Judge Bell: On what ground?

Mr. Moore: Upon the grounds, one, that they discriminate against these petitioners in that they deny them equal protection and due process.

Judge Bell: How does the statutes do it? Let me say this to you, give you fair warning. You know we have dissolved two or three Three Judge Courts in Atlanta recently on In Re: Branford, not on the application,

unconstitutional application, but because all that was complained of was the unconstitutional result. Now, see if you can distinguish this situation from an unconstitutional result.

Mr. Moore: Your Honor, without arguing the—

Judge Bell: —Just see if you can distinguish the two.

Mr. Moore: Well, Your Honor, I would like to say that the easiest statute on which to draw in support of the exercise of the jurisdiction of the Court is the statute providing for the qualification of the school board members, particularly the freeholder provision. It is our contention that that is a denial of equal protection and due process because it sets a property qualification for office holders as such and has the effect of sifting out a great majority of the constituency and insuring in effect that Negroes will not be put on the board, elected to the board of education. We have briefed that extensively in our brief. The only question—

Judge Bell: Well, don't you think we will have to [13] have some evidence on whether or not that does actually pinch out anybody? I think there are a great number of Negro freeholders in Taliaferro County.

Mr. Moore: Yes, sir, and we can abide by the admissions which are already in evidence that they have never served on the Board of Education.

Judge Bell: I know, but do you know how many Negro freeholders there are in Taliaferro County?

Mr. Moore: We will put up some evidence on that.

Judge Bell: You see, if there were none there would be some substance to what you say, but the question would be whether or not a freeholder qualification is a reasonable qualification.

Mr. Moore: Well, we have demonstrated in our brief that it is not a reasonable qualification. We don't have to be right in that contention, Your Honor. The only thing is that the contention has to be a substantial one.

Judge Bell: To keep a Three Judge Court.

Mr. Moore: And certainly it is not obviously trivial.

Judge Bell: Right.

Mr. Moore: And certainly there is no precedent saying that there is no merit to the claim.

Judge Bell: All right, other than the freeholder point, what other points would you have that would support keeping a Three Judge Court?

[14] Mr. Moore: Well, there is no objective criteria for the qualifications of board members. Take for example—

Judge Bell: Well, I don't think there is anything to that. You see, if we had objective criteria you would complain that they had pinched people out. The best thing you can do now to make a law stand up is to say nothing, just to say to appoint eight people, or something like that, otherwise ever statute is now is under attach some way another.

Mr. Moore: Yes, sir, and there is a reason for that, because we are now entering a period—

Judge Bell: —The only reason I can see is to finally break the Government down and nobody can be appointed to anything.

Mr. Moore: No, sir, it's not that, Your Honor. We are entering a period of more egalitarian society, and the laws, most of the laws, with which we enter that period were made in a different historical epoch.

Judge Bell: Which will put children on the school board?

Mr. Moore: I wouldn't—

Judge Bell: —Didn't they try to turn France over to the children to run?

Mr. Moore: I wouldn't want to answer that, Your Honor, as to turning it over to the children to run. The only thing I would make in response to that is this: If children are known to run the school board, if children alone ran France, that would be a question as to whether or not the country or the [15] school board is being run by a true cross section of the community.

Judge Bell: Well, we are not going to get into anything like that. You are not going to get us to rule that children have a right to be on the school board or anything like that. As far as I know the best people, the most responsible people, ought to be running the school board and running the Government.

Mr. Moore: Well, Your Honor, we have a serious question in Taliaferro County as to who is; more responsible people.

Judge Bell: That's right.

Mr. Moore: And, historically, the most responsible people under the statute which resulted in the election of the school board members have been white, and there doesn't seem any other way that you can construe these statutes except to say that the qualifications mean White. When they said "intelligently and upright", they mean white.

Judge Bell: Well, you know that in the south for many years that this was the system but we have had a change in time and a lot of offices have not yet been held by Negro citizens, but there are a lot of offices to which they are now moving into, and it is too simpler argument to say "Well, they have never had any Negroes on the school board". Well, we know that. Everybody knows that. There never has been one in the history of Taliaferro

County I don't imagine unless it was during the Reconstruction. You got to figure it on Reconstruction, they may have had some then. No, they didn't have a school board then.

[16] Mr. Moore: All I know about Reconstruction, Your Honor, is this: That in the very same year that they enacted these statutes, 1868, was the very same year that they kicked out all of the Negro members of the Georgia State Legislature.

Judge Bell: Right.

Mr. Moore: And when they enacted these statutes providing for intelligent and upright citizens—and systematically since 1868 Negroes have been excluded in every aspect of public life in Taliaferro County.

Judge Bell: Right. Well, everybody will stipulate that.

Mr. Moore: Yes, sir, we have proved that, and we think that when you read these statutes realistically and you figure them against the historical context in which they have been operated that these statutes dictate and mandate one thing alone and that is "White Supremacy", white leadership and control of the government, the school board and every aspect of public life in the county, and we think the statutes are of that type, Your Honor.

Judge Bell: Well, you see, you can prove that about any statute, because you see this business of just always showing that the south is always wrong about everything in the future because of what they done in the past is going to have to stop somewhere along the line. Now, you can show on any statute in the books for a hundred years that no Negroes have held an office. They haven't been governor, haven't been on the Public Service [17] Commission, Highway Board, or anything you want to show,

you can make this same; argument, you would knock out every statute.

Mr. Moore: Well, Your Honor, I understand the feeling that the Court has for the regional aspect of what has been the attack heretofore against these practices—

Judge Bell: —The Court is trying to get this thing straighten out for the future than all of this about the past.

Mr. Moore: The reason that it has been a regional attack is because the south has been the area where these practices have been the most extensive, and most intense, and most oppressive, however, now a new vision is opening up and almost the same attack can be made throughout the country. The country is truly becoming national as to discrimination. It has a national character.

Judge Bell: Weren't you the lawyer in the draft board case not long ago where the Justice Department was arguing against you because they found out that they didn't have any Negroes on the draft boards in the north either.

Mr. Moore: Yes, sir, but I don't think that invalidates it because they didn't have any in the north. There is an interesting book on it, Your Honor, if you would like to look at it sometime. It is called "North of Slavery", by a fellow named "Libwak". We didn't cite it in our brief. Where he points out how national slavery is, or slave practices is, how bad it is in the north and in state governments and in the federal government particularly, [18] how Negroes were systematically excluded from the national life pursuant to statutes, and this is a very interesting book. Now, we do cite one book in our brief, Your Honor, and apparently the secretary omitted to give the name of the book.

Judge Bell: What page are you talking about?

Mr. Moore: It is page 25—24 and 25. There is an extensive quotation at the bottom of page 24 and continuing to page 25. That quotation is from Elkins Slavery.

Judge Bell: E L K I N S?

Mr. Moore: The University of Chicago Press, Your Honor. I think it is footnote 64 in Elkins' book.

Judge Bell: All right. Well, now, you are talking to some judges that understand all about the south and about the Reconstruction and all of that, but here is what I want to ask you, lets get down to this case: Now, your main complaint, I take it is that there are no Negroes on the school board.

Mr. Moore: That's right.

Judge Bell: That is the number one complaint.

Mr. Moore: Yes, sir, and there is a reason for it. There is a reason for that. It is a constitutional and statutory scheme.

Judge Bell: Well, I don't know about that. Let's don't get into the reasons. I am trying to find out what your complaint is about. You are complaining because there are no Negroes on the school board.

[19] Mr. Moore: Yes, sir.

Judge Bell: Number one. Then your subsidiary complaint is that the jury list is so composed that you can't get enough Negroes on the grand jury to get anybody appointed to the school board.

Mr. Moore: Yes, sir.

Judge Bell: So, the reason you are attacking the jury list really is because you are attacking the school board.

Mr. Moore: A part of the scheme and we have to attack it.

Judge Bell: Have to attack the entire school board.

Mr. Moore: Yes, sir.

Judge Bell: Now, the third thing, and this I do not understand, why do you have the traverse jurors in the case?

Mr. Moore: Your Honor, because that is a statute that the grand jury has to be selected from the traverse jury, and they take—

Judge Bell: —I know, but why would you sue the traverse jurors individually? That would be like selecting five citizens from Peachtree Street as representing some class.

Mr. Moore: We do this under Rule 23, and we also do it under some decisions of the Fifth Circuit, which have permitted class suits to be brought against a defendant as representative of a class—

Judge Bell: Well, suppose you picked me out to sue [20] because I was a traverse juror?

Mr. Moore: The reason for that, Your Honor—

Judge Bell: —What could I give you? What relief could you get from me?

Mr. Moore: Well, the thing about that is if this particular individual actually represents a class, then the class would be bound by the judgment and an injunction would run against a class.

Judge Bell: Yes, but you know that no traverse juror represents all the jurors in a county.

Mr. Moore: The fact that he is a member of a class because he is a traverse juror. He is representative of that class. The test is whether or not his representative is adequate. Certainly the court would not want us to name some three hundred odd individuals as defendants in order to bring them all to court.

Judge Bell: Well, if you did we would strike all that part of the complaint because I don't see how it has a thing in the world to do with your case.

Mr. Moore: But we are actually, Your Honor, the class of grand jurors, which is the smaller class. The traverse jury is implicated because of the fact the grand jurors are taken from the traverse jury list.

Judge Bell: Wait a minute now.

Judge Morgan: Who are you claiming your damages from?

Mr. Moore: Your Honor, we think that on that score we [21] would obtain the damages from all of the defendants.

Judge Bell: Including the traverse jurors, just anybody who happened to be put on the jury you want to get damages from?

Mr. Moore: Your Honor, that would be left up to the court in its sound and equitable discretion as to on whom you would put the damages.

Judge Bell: In paragraph 3 you say that Fouche, Durham, and Bacon, are white citizens of Taliaferro County. They are registered voters and Members of the Grand and Traverse Juries of Taliaferro County. They are sued individually, and in their capacities as Grand Jurors of Taliaferro County. What is it you claim they have done?

Mr. Moore: They participated. They are necessary to be before the Court because they can insure the adequacy representation of the grand jurors in that county.

Judge Bell: You think we could just seize the Grand Jury and tell them what to do just by virtue of these folk being defendants, tell the Grand Jury to meet and elect somebody?

Mr. Moore: They are sued as a class, as representative of a class, Your Honor.

Judge Bell: I just don't see what the Grand Jury—the Grand Jury is a changing thing. It changes every term of court.

Mr. Moore: It would be against them and their successors in office as Grand Jurors.

[22] Judge Bell: Well, I see how you can sue the school board on the theory you say they have cut off the funds and have stopped running the school buses and that sort of thing, and then I see how you could sue the Jury Commissioners on the theory that they have not composed a fair jury list, but it is hard for me to see how you can sue Grand Jurors.

Mr. Moore: It is the Grand Juries as a class who are the electors. They are the electors of the school board members.

Judge Bell: Why don't you just sue three registered voters then?

Mr. Moore: No, sir because the—

Judge Bell: —And get damages from every voter in Taliaferro County and that would include more Negroes than White?

Mr. Moore: That's interesting, Your Honor, but the thing about it is the electorate for obtaining school board members, is the Grand Jury. The Grand Jury, under statute, is mandated to elect the school board members.

Judge Bell: I don't see how that is any entity. That's not like suing members of an unincorporated association, for example. Grand Jurors are transient. They are just a group selected at one term of court and another group at

another term of court. What connection—I bet they don't even have a Grand Jurors Association.

Mr. Moore: Well, Your Honor, it is in this connection [23] in that the Grand Jurors are an identifiable class. They are persons who are appointed by the Jury Commissioners from time to time to serve in that office, and as a class it is identifiable with respect to office holders, it is identifiable with respect to function. This would allow several of their members to be sued as representatives of that class, since it is an identifiable class, it is not speculative, it is not vague, it is not an indefinite type of class, and that the injunction would run against the present body of Grand Jurors, as a class, and their successors in office.

Judge Bell: Well, are these three men presently Grand Jurors?

Mr. Moore: Yes, sir.

Judge Morgan: How long does the Grand Jury serve under the Georgia law?

Mr. Moore: I think they can serve at least two years, if not more.

Judge Morgan: Doesn't the average Grand Juror serve at the term of court and then serve until the next term of court, whenever that might be?

Mr. Moore: That is the usual practice, I think, Your Honor.

Judge Morgan: I presume that every superior court meets at least twice a year, don't it?

Mr. Moore: Yes, sir.

[24] Judge Morgan: So, he would only serve for six months.

Mr. Moore: Well, Your Honor, you see the grand jury list is revised every—

Judge Morgan: —He is no longer serving as one of those 23 Grand Jurors—he only serves until the next term of court.

Mr. Moore: Yes, sir, but he is a member a class of Grand Jurors during the two year period that he is on the grand jury list.

Judge Bell: What you mean is he is on the roll?

Mr. Moore: Yes sir.

Judge Bell: He is one of those two fifths of the Jurors who are drawn to begin with?

Mr. Moore: That's right, sir.

Judge Bell: And you want to make all of them defendants?

Mr. Moore: Yes, sir.

Judge Bell: Whether they have ever been a Grand Juror or not, you want to put them under an injunction and make them pay damages?

Mr. Moore: That would be a discretionary matter with the court.

Judge Bell: Well, I don't believe you are going to get very far with that.

Mr. Moore: Well, Your Honor—

Judge Morgan: How does the two fifths know that he is [25] a member of the Grand Jury?

Judge Bell: He doesn't know it, and there is no way in the world for him to know it.

Mr. Moore: Well, Your Honor, his name is in the box.

Judge Morgan: He wouldn't know that his name was in the box, unless he was drawn, would he?

Judge Bell: I tell you one thing, if you prevail in this kind of an argument you would have a mass exodus from Grand Juries all over this state. Everybody would get off.

Mr. Moore: A Grand Juror? All he would have to do is to go to the court house.

Judge Morgan: You would have to make inquiry as to whether your name was on the Grand Jury?

Mr. Moore: If you had not been summonsed, you might.

Judge Morgan: Does the law provide for it to be published now?

Mr. Moore: I don't think so.

Judge Bell: Well, somebody said that the difference between tweedledee and tweedledum was to have somebody in charge of the tweedle, or some sort story as that. That's what we are doing now, so lets get onto something else.

Mr. Moore: Your Honor, we will just close out with this observation: If the person we have sued is adequate to give notice to the other Grand Jurors to come in and defend, I would think that we have made out a pretty good class action against them, against the Grand Jurors as a class.

[26] Judge Bell: What's the nearest case you have in point in suing three people that represent such a body as a Grand Jury? Have you got a Grand Jury case?

Mr. Moore: One case is pending in the Fifth Circuit now. "Bouchcheck" (Spelling not certain) against somebody from Greene County. It has not been decided, where the Grand Jury was sued as a class, a civil action, suing to enjoin a prosecution and the Grand Jurors are named, or sued as a class, class representative and that's pending in the Fifth Circuit.

Judge Bell: Greene County, Georgia, or Alabama?

Mr. Moore: Greene County, Alabama, Your Honor.

Judge Bell: All right.

Mr. Moore: And a stay order was issued by the Fifth Circuit.

Judge Bell: Well, I tell you, if this was the ~~strongest~~ part of your case you wouldn't be here long, but you have got more meritorious theories than this.

Mr. Moore: Your Honor, under the analysis of class, an identifying class, that was spelled out in Fernandez against Texas, which we do not cite in our brief, I think that there is a definite class and that the proper test under Calhoun against Callodays, a Fifth Circuit case, involving an unincorporated association which is a distinction—

Judge Bell: —I was on that panel.

Mr. Moore: —that we have made out a case suing as a class, Your Honor.

[27] Judge Bell: Suing the Grand Jurors?

Mr. Moore: Yes, sir.

Judge Bell: Now, under the second thing, what right does a Three Judge District Court have to award damages in the event these people ask for a jury trial?

Mr. Moore: Now, they wouldn't be entitled to a jury trial.

Judge Bell: You mean just take the money away from them without giving them a jury trial?

Mr. Moore: Yes, sir, because this is an exercise of historical equity power.

Judge Bell: To take damages?

Mr. Moore: To enter ancillary damages, an ancillary award of money. The equity courts have done this since time immemorial to make the parties whole and the amount of damages is something left solely to the discretion of the court.

Judge Bell: Would you give Mr. Turner the half million dollars, or would you divide it among some of his friends?

Mr. Moore: Your Honor, in our brief we conclude with what we think would be a proper disposition of the funds, that the funds would be paid to a Receiver or Special Master who would use those funds to equalize educational opportunities by giving the people of Taliaferro County a remedial program, remedial educational program and manpower training program so they can acquire skill and sorta compensate them.

[28] Judge Bell: Who would pay the half a million dollars, the white citizens or all citizens?

Mr. Moore: It would be apportioned among the citizens who have been members of the class of wrongdoers.

Judge Bell: Every one who has ever been a Grand Juror would have to put up something?

Mr. Moore: It might turn out that way.

Judge Bell: I see.

Mr. Moore: That is a question that is left to the sound discretion of the Court. We think that as a principle of equity and principle of law the Court does have jurisdiction to give it, but whether or not in the exercise of discretion the Court would do it is a different matter.

Judge Bell: I don't see why you want to clutter up your case. You have got a case resting on these facts, that there are no white children in school, so it is an all Negro school with an all white school board.

Mr. Moore: Yes, sir.

Judge Bell: And they have stopped running buses.

Mr. Moore: Well, they say they are running buses.

Judge Bell: Well, wait a minute. That's what you say. Now, in your petition you say that they have done away with the school buses, that they have cut down on the school

books and various other things and all of this and it became an all Negro system. That's your complaint. That's your basic complaint. Now, [29] lets get onto that.

Mr. Moore: Your Honor, the basic thing about that is the defendants have permitted an exodus of white children from the—

Judge Bell: —You don't think the freedom of movement has been stopped or should be stopped in this country, do you?

Mr. Moore: No, sir. Let me finish, Your Honor.

Judge Bell: All right.

Mr. Moore: They have permitted an exodus of white children from the county and they have done nothing to encourage the children, the white children, to stay and study in the county, and as a result the plaintiffs are certainly hurt because they are without contact with whom they certainly have adult experiences they don't have at school, school life experience, and—

Judge Bell: —Do you have any suggestion about how they would go about getting some white children in the school other than using some sort—

Mr. Moore: —Excuse me, Your Honor. I think if the school board had people on there of good will, for the want of a better term, that they would encourage, exploiting governmental programs in the county that would lead to a rigid school system and a rigid curriculum.

Judge Bell: You mean beg the whites to return.

Mr. Moore: Yes, sir, and make the school attractive to [30] all the people, because it certainly couldn't be a desirable thing to transfer your kids to an adjoining county. That's an imposition of time, if nothing else.

Judge Bell: Well, they are not supposed to be doing that.

Mr. Moore: Well, the private parents do it.

Judge Bell: We had that out before when we were over here, that if the adjoining counties took any white children from Taliaferro County they had to take the Negro school children.

Mr. Moore: Well, they are receiving white children now. As a matter of fact the school board members themselves are sending their children over to white counties. We have got one school board member who sends his kid up to Jonesboro—in Jones County.

Judge Bell: Gray, Georgia?

Mr. Moore: I think so, and another one sends his kids over to Greensboro in Greene County. He has three kids going over there.

Judge Bell: What does he do, pay tuition?

Mr. Moore: I don't know what the arrangement is, Your Honor.

Judge Bell: Well, then Greene County would have to take all the Negro children who want to go over there, if they are taking whites. We had that out before. Is that going to get back into the case again?

Mr. Moore: No, sir. We would just like to say this: If [31] democracy is the creed for the elector process in Taliaferro County for the election of school board members, the plaintiffs are confident that the school system will become so enrich that all the citizens of the county would want to go to school in that county.

Judge Bell: All right. Now, lets get down to the school board. Is it true that there are three vacancies?

Mr. Moore: I think that's right.

Judge Bell: Three vacancies. How would you imagine the Court could go about getting some Negroes on the school

board through the Grand Jury, assuming that is the only way you can get anybody on the school board.

Mr. Moore: First, we would have to make another legal assumption, and that legal assumption would be that the court would consider the petition as raising a substantial question which it will postpone for a decision and then look at the facts and issue an injunction running against the illegal administration of the statutes.

Judge Bell: I know, but suppose we just issue an injunction that wouldn't accomplish anything.

Mr. Moore: Yes, sir. Well, you have to do at least two things. One, you have to enjoin the inforcement of the statutes and, two, you would have to appoint a receiver in the interim to run the schools with the aid of an interim committee of parents.

[32] Judge Bell: Where are you going to find a receiver?

Mr. Moore: Well, we found one last time, Your Honor.

Judge Bell: Yes, but that is complete imposition on the State School Superintendent to make him run one county.

Mr. Moore: It maybe an inconvenience but inconvenience is required in order to inforce the constitution, and we can't weigh the relative inconvenience to parties and let constitutional rights go down the water shed. Certainly there is an inconvenience. I wouldn't deny that.

Judge Bell: Well, the question is whether it is unconstitutional not to have Negroes on the school board. But just on the basis of fairness it certainly seems like there ought to be some Negroes on the school board. I don't know about the constitutional question.

Mr. Moore: Your Honor, I don't think I could stand here and say that you have got to have Negroes on the school board. I don't that I can legally argue that point,

but I think I can argue the other point, and that point is that they can't be fenced out of the—

Judge Bell: That's right, you can't have a system that excludes Negroes.

Mr. Moore: Yes, sir, and the effect of this system excludes them, that is, that they do not have an opportunity of getting on the school board. That's the difference.

Judge Bell: Suppose they elected the school board [33] members and Negroes ran for office and they were all defeated? You couldn't say anything about that.

Mr. Moore: Well, I don't know, Your Honor. They had an election over there the last time, not for the school board, but for county commissioners and a couple of offices and the Negroes didn't win out, and there were reasons for that.

Judge Bell: They split?

Mr. Moore: Well, that was one factor and the other factors were that they were harassed and oppressed and the precincts were so arranged that it made it uncomfortable for the people to come in and vote.

Judge Bell: Well, you know you could get the Justice Department and they would send a hundred people in there to watch over—shepherd the situation, if you made a complaint.

Mr. Moore: Yes, sir. Your Honor, they can watch all they want to, but sometimes you have to prod to get the sheep in line and the Justice Department doesn't seem to be prodding them. They watch a lot. They have their eyes on this situation, but I don't think they are prepared to do anything about it.

Judge Bell: Well, now, lets return to the evidence. Rather than putting on witnesses right now, what would

your proffer be? We are treating this hearing as sort of a pretrial conference.

Mr. Moore: Yes, sir. Your Honor, the first thing that [34] we would proffer is a certified copy of the Grand Jury list.

Judge Bell: Wait a minute now. A proffer is what you expect to prove.

Mr. Moore: Yes, sir.

Judge Bell: Now, you are moving away from a proffer and you are offering evidence.

Mr. Moore: Well, Your Honor—

Judge Bell: —Here is what I had in mind; I thought you might state, make a proffer that you could prove—just state what I would expect to prove.

Mr. Moore: Yes, sir.

Judge Bell: And then it maybe that Mr. Bloch and Mr. Evans will say “Well, we will agree to that. We will stipulate that those will be the facts.” Now, I don’t know whether you are prepared to do that right now. It maybe that you will need a few minutes to think it over. Mr. Evans what do you think about that procedure?

Mr. Evans: Well, Your Honor, of course, our interest is purely the facial constitutionality of the statutes. I believe that would be up to Mr. Bloch.

Judge Bell: All right, sir. I will hear from Mr. Bloch on this.

Mr. Bloch: If Your Honor please, I suggest to you and to the Court that before we proceed on that outline that it might be well to get this damage question, you know, out of [35] the case. We have a special motion on that, 12(e) and 12(f) addressed to paragraph 20, I believe, of

the complaint, and if that goes out on motion, then we are no longer concerned from our standpoint.

Judge Bell: Well, I thought it would be best to find out what the facts were before we ruled on the damage motion.

Mr. Bloch: Of course, the Court is protecting us on all rights as to jury trial and what-not and so forth.

Judge Bell: Exactly.

Mr. Bloch: O. K.

Judge Bell: Exactly. Now, what we want to do—there are certain facts—for example, the requests for admissions that you made.

Mr. Moore: Yes, sir.

Judge Bell: We could go down that, you see, and this will give us some stipulated facts.

Mr. Bloch: I will let Mr. Owens handle that part of it.

Judge Bell: All right, pull that chair up by Mr. Moore and lets work along together on this and try to get the facts straightened out. Now, let me ask the questions, Mr. Moore.

The first one is that the Jury Commissioners of Taliaferro County, Georgia, are all members of the so-called White or Caucasian Race. Is that true, Mr. Owens?

Mr. Owens: We have admitted that, Your Honor.

[36] Judge Bell: You have?

Mr. Owens: Yes, sir.

Judge Bell: Where is the response. I don't know whether I have that or not.

Judge Scarlett: Have you got it?

Mr. Moore: That's it up there, I think.

Judge Bell: Will somebody let me have a copy of the answers?

Mr. Owens: May I look through it right quick? Maybe I can spot it.

Judge Bell: I went through my file. I didn't see it. All right, that's admitted.

The next one is the Jury Commissioners of Taliaferro County have been members of the so-called White or Caucasian Race for at least 50 years. Your answer is your present knowledge doesn't encompass 50 years, which you think probably that is so.

Mr. Owens: That's correct, Your Honor.

Judge Bell: —Within recent memory there has been no Jury Commissioners in Taliaferro County—

Mr. Moore: —Negro members.

Mr. Owens: The same effect, Your Honor.

Judge Bell: Yes. Four: Members of the Board of Education of Taliaferro County are Members of the White or Caucasian Race. You admit that, I suppose?

Mr. Owens: That's correct.

[37] Judge Bell: Five. Within recent memory, at least 50 years, the Board of Education Members have been White. So, that's admitted. —Never been within recent memory any Negro Member—that's admitted.

Seven. No children of any Members of the present Board of Education of Taliaferro County attended public schools of Taliaferro County. Admitted.

Eight. No children of the so-called White or Caucasian Race attend public schools in Taliaferro County. That's admitted.

Is that true again this year?

Mr. Owens: That is, Your Honor.

Judge Bell: I know there were none last year. Jury list for grand and traverse juries of Taliaferro County contain no more than 30% members who are Negroes.

You say you don't know what the ratio is?

Mr. Owens: That's correct, Your Honor.

Judge Bell: How do you know that, Mr. Moore?

Mr. Moore: Your Honor, we have had people who have lived in the county for upward to 70 years who have examined the list and they identified eleven persons on the list of 130 people as being Members of the Negro Race.

Judge Bell: 11 out of 130?

Mr. Moore: Yes, sir.

Judge Bell: Is that the Grand Jury list?

Mr. Moore: The Grand Jury list.

[38] Judge Bell: Now, you expect to put a witness on to testify to that?

Mr. Moore: Yes, sir.

Judge Bell: Well, lets hold that out. That's question No. 9. Now, have you got some one who is going to testify as to the number on the Traverse Jury too?

Mr. Moore: Yes, sir.

Judge Bell: All right, what do you expect that to show?

Mr. Moore: 56 Negroes and 272 whites for a total of 328.

Judge Bell: All right. We have got to hear the evidence on that.

All right. Ten. The Jury List contains no more than 25% members who are female. They say they don't know about that.

Mr. Moore: We have examined the list, Your Honor. Now, on the Grand Jury there are no women of either race.

Judge: Now, are you trying to make another constitutional question this morning that women have a right to serve on state juries? I know that we had a Three Judge

District Court to rule that in Alabama, but so far as I know the Supreme Court has never ruled on it.

Mr. Moore: Yes, sir. We make that contention, Your Honor.

Judge Bell: You don't have to raise any more points [39] than you have already raised.

Mr. Moore: That's true. But we make it two ways, Your Honor. One is exclusion of women. Women have a right to serve, which may raise another question.

Judge Bell: I don't believe you have that right. You see, you are not representing anybody on trial.

Mr. Moore: Your Honor, this is a better method because the federal law expressly provides for raising it in civil actions. It is better to raise—

Judge Bell: —Only on Race, the Civil Rights Statute.

Mr. Moore: Well, Your Honor—

Judge Bell: —It says Race. It doesn't say anything about sex.

Mr. Moore: White against Crook was a civil action before Three Judges, a court civil action, where this question was raised among other things.

Judge Bell: Well, has White against Crook ever been followed up? I thought it was sorta noted by the fact that nobody has ever followed it. Was that a civil action, you think?

Mr. Moore: Yes, sir, a Three Judge Court action in Alabama.

Judge Bell: We will let you offer evidence on that.

Mr. Moore: Another way of reaching the same thing is to say that due process should—or rather to say that true cross section should reflect all people who are not excluded by [40] state statutes.

Judge Bell: Now, you don't want to confuse the federal standards with the state standards.

Mr. Moore: No, sir. All women can't serve in Georgia and I think—

Judge Bell: And they don't have to serve.

Mr. Moore: I think they may have repealed that provision where they could request a written permission to be excluded. I am not sure about that.

Mr. Owens: I don't think they have, Your Honor, in the Code when I read it yesterday.

Judge Bell: We will let you offer evidence at least as to sex.

All right, then eleven is that there are no white teachers in the Taliaferro County School System. You admit that?

Mr. Owens: We do.

Judge Bell: All right. "Twelve, there are no free school buses provided for children who attend the public schools of Taliaferro County." You deny that as being completely false.

"At the present time seven free school buses provide transportation for at least 95% of the students who attend the public schools in Taliaferro County."

What have you got to say to that, Mr. Moore?

Mr. Moore: You can cross that out. There are some ten [41] per cent of the kids who attend school or who walk—

Judge Bell: Well, that's true everywhere. I walked to school all of my life.

Mr. Moore: But is probably that they are in that area that is zoned where you don't have to provide school buses.

Judge Bell: Well, ask Mr. Turner. Check with your client and see if you can stipulate that this is a fact, number twelve.

Mr. Moore: Yes, sir.

Judge Bell: Stipulate it as a fact. All right.

Mr. Moore: Yes, sir.

Judge Bell: Now, thirteen is "Members of school administration of Taliaferro County are all members of so-called white or Caucasian Race", and you answer that by saying one person. You are talking about Mrs. Williams.

Mr. Owens: That's correct, Your Honor.

Judge Bell: Thirteen: "Members of"— No, that is one that I have just had.

Fourteen. Now, we get down to the expenditure of funds per pupil is less today than it was when there; were members of the white race attended public schools.

You answer that by saying that "present per pupil expenditure of funds is greater today."

Now, it might be greater because there are fewer children. It seems to me that this is a very nebulous question [42] and answer—

Mr. Owens: —I agree.

Judge Bell: I think we have got to have the amount of money.

Mr. Owens: That's in the answer to the interrogatory.

Mr. Moore: We have established the amount of money being spent.

Judge Bell: Well, I don't have those. We will get to that in a minute though. Lets see.

Mr. Owens: May it please the Court—

Judge Bell: —Can't you just call those out?

Mr. Owens: Yes, sir.

Judge Bell: And we will just stipulate that now.

Mr. Owens: At the present it is \$434.82 per pupil.

Judge Bell: All right.

Mr. Owens: Whereas before it was \$322.76.

Judge Bell: How much?

Mr. Owens: \$322.76. That's the answer to the interrogatory as filed by the Members of the Board of Education.

Judge Bell: All right. Now, how would that figure out on the total sum. You would have to multiply those figures by the number of students in school.

Mr. Owens: That's correct, Your Honor, you would.

Judge Bell: Is that based on the average daily attendance?

[43] Mr. Owens: That's based on the financial report as sent to the State Board of Education. I would assume that it is based on the ADA.

Judge Bell: Well, this morning, sometime, put Mrs. Williams on the stand and lets just establish the amount that was spent, the total amount that was being spent on the schools prior to this current situation. I don't know if that establishes anything because you might not need as much money, if you don't have as many pupils. You wouldn't need as many teachers.

Mr. Moore: Well, we would like for that complete picture to be before the Court.

Judge Bell: All right. You have got these two figures, maybe that's enough then.

All right, fifteen: You have got the number of teachers. No, the white teachers are less. That is a self evident fact.

Mr. Owens: That's correct, Your Honor.

Judge Bell: "Average level of higher education as seen by the teachers is less today than it was during the period when the public schools were attended by members of the white race." That's sixteen.

Mr. Moore: They say it is about the same.

Judge Bell: They say it is about the same. Is that significant in your case?

Mr. Moore: No, sir, I don't think that is critical.

[44] Judge Bell: Well, do you think that is a fair statement, that it is about the same?

Mr. Moore: I would suspect it would be a little higher. Ordinarily the Negro teachers go further in school.

Judge Bell: I would think it would be higher now than it was before. Why did you say it was less then?

Mr. Moore: I wanted to find out.

Judge Bell: Oh, I see. You were trying to find out.

Mr. Moore: Yes, sir. The other thing, there is attached to one of the documents a list of the teachers in the school and the schools they have attended, the degrees that they hold.

Judge Bell: All right. Seventeen: "The number of library books per pupil in public schools is less today than it was when the members of the white race pupils were in the school system."

The answer is that the number is greater. I wouldn't think it would be any less. How could it get less? Did they burn some books or throw any away or anything? They still have got the same books, haven't they?

Mr. Moore: It would be over crowding, Your Honor. I think this accounts for the fact the white kids are no longer in the school system.

Judge Bell: The school wouldn't have thrown the books away, would they?

Mr. Moore: When you divide them by the number of students [45] you come out with a different figure.

Judge Bell: Mr. Owens, what do you know about that?

Mr. Owens: Well, if it please the Court, in our—

Judge Bell: —Have you got rid of any books?

Mr. Owens: Not that we know of. We show in our answers to the interrogatories presently 8.7 library books per public school student. In 1964, 5 library books per public school student.

Judge Bell: I imagine that the books they had in the Alexander Stephens Institute were probably put into this—

Mr. Moore: —Either into this school or in the private school.

Mr. Owens: May it please the Court, we show in our answer that the Board of Education has not contributed the first penny—

Judge Bell: —I was going to say, have you got any evidence that they are putting any books in the private schools? If you could prove that, you would have a better case.

Mr. Owens: Your Honor, we don't think there is any evidence to support that. That's getting off into the realm of wondering, you know.

Judge Scarlett: I didn't get that. Did you say they took them out at night to do that?

Mr. Moore: They didn't probably take them out at night.

[46] Judge Scarlett: You mean to say that Board of Education would take the books out?

Mr. Moore: We couldn't prove that, Judge.

Judge Scarlett: Well, lets don't say it then.

Judge Bell: All right. Eighteen: "The average number of pupils in the class room is greater today in the public schools than it was when white children were attending."

You say that is true? 27 now and it was 25.

Mr. Owens: Yes, sir.

Judge Bell: Why did you run it up? I mean, why don't you use part of the other building?

Mr. Owens: May it please the Court, I am not familiar with the physical lay out of the facilities. Those are the figures that we gave.

Judge Bell: Well, the Court is very familiar with it.

Mr. Owens: Well, those are the figures we gave.

Judge Bell: All right, you have gone up from 25 to 27. "Number of pupils per teacher is greater today." I guess that is the same answer, isn't it?

Mr. Owens: Yes, sir.

Judge Bell: 27 and 25.

Mr. Owens: That's correct, Your Honor.

Judge Bell: Twenty. The number of specialists per public. "They say a specialist means guidance teachers, speech therapy, music teachers and the like." They have less now. You [47] deny that. You say you have a full time band director. You didn't have a band director when the white children were going.

Mr. Owens: That's correct, sir. That was the only specialist employed.

Judge Bell: You don't have any guidance teachers?

Judge Bell: No, sir.

Judge Bell: Vocational teachers?

Mr. Owens: No, sir.

Judge Bell: Reading specialists, or anything like that?

Mr. Owens: No, sir.

Judge Bell: Can we stipulate when these vacancies came about on the school board?

Mr. Owens: You mean a vacancy, Your Honor, in the sense that a person has not been elected by the Grand Jury?

Judge Bell: Well, I understood that you had five members and that three resigned.

Mr. Owens: They did at one time, I think, but the board is presently composed of all of its members. They fill the vacancies themselves as provided by law.

Judge Bell: Well, that is a part of the constitutional provision, that they can elect people themselves until the next Grand Jury meets?

Mr. Owens: That's correct, sir.

Judge Bell: They now have five?

Mr. Owens: Yes, sir.

[48] Judge Bell: Well, lets put that down. Who were the five to begin with?

Mr. Owens: Just a minute, Your Honor.

Judge Bell: Cranston Jones, is one.

Mr. Owens: Cranston Jones is not presently a member, Your Honor.

Judge Bell: All right, lets just put them down. W. A. Drinkard.

Mr. Owens: Yes, sir. He is deceased.

Judge Bell: Jones resigned?

Mr. Owens: Yes sir, he resigned June 30th, 1966.

Judge Bell: When did Mr. Drinkard die?

Mr. Owens: About a month ago, I think. I am not sure.

Mr. Bloch: He resigned before he died.

Judge Bell: Well, he had resigned. That would be the statute. When did he resign?

Judge Scarlett: Well, he had to resign before he died.

Mr. Owens: We will have to get that later.

Judge Bell: All right. Now, the next man is H. E. Williams, Jr.

Mr. Owens: He served until September 1967, Your Honor, and he resigned.

Mr. Moore: That vacancy was filled by the Board of—

Judge Bell: —Well, don't get into that yet. Just minute. 1967?

[49] Mr. Owens: Yes, sir.

Judge Bell: All right, Carl Chapman?

Mr. Owens: He is presently a member, Your Honor.

Judge Bell: Mrs. Willie Mae Fambrough.

Mr. Owens: She completes her 13th year on March 2nd of this year.

Judge Bell: Is she still a member?

Mr. Owens: She is still a member.

Judge Bell: All right, now, who has been elected?

Mr. Owens: Excuse me just one minute, Your Honor. May it please the Court, Mr. Horace Hill. . . .

Judge Bell: —Horace Hill?

Mr. Owens: —Took Wiley Cranston Jones' place and he has been confirmed by the Grand Jury. Mr. Moore Pittman took Mr. W. A. Drinkard's place and he has not yet been confirmed by the Grand Jury.

Judge Bell: What was his name—Moore Pittman?

Mr. Owens: Yes, sir, Moore Pittman.

Judge Bell: Is he related to the Sheriff?

Mr. Owens: I don't know, sir.

Judge Bell: You don't know that. All right. He is elected by the board but has not yet been confirmed.

Mr. Owens: That's right, Your Honor.

Judge Bell: All right, who is the next man?

Mr. Owens: Mr. Lary Beazly took Mr. Horace Williams, Jr's place and he has not yet been confirmed.

[50] Judge Bell: B E A S L Y. (Spelling)

Mr. Owens: I think it is B E A Z Y, (Spelling) Your Honor.

Judge Bell: He has been elected by the Board but is not yet confirmed?

Mr. Owens: That's correct, Your Honor.

Judge Bell: Are any of these gentlemen Negroes?

Mr. Owens: No, they are not, Your Honor.

Judge Bell: All white?

Mr. Owens: They are all white, Your Honor.

Judge Bell: Do the Negroes pay taxes in Taliaferro County? Do you have any Negroes there paying taxes?

Mr. Owens: We will assume that there are many Negroes paying taxes, Your Honor.

Judge Bell: You don't think it would be fair to put some Negroes on the Board of Education though by the fact that they live there and pay taxes?

Mr. Owens: May it please the Court, I don't have—

Judge Bell: —You don't have anything to do with that?

Mr. Owens: I don't have any opinion as to that, or anything to do with the selection.

Judge Bell: Right. You are not in the selecting business.

Mr. Owens: That's right, Your Honor.

Judge Bell: All right.

Mr. Moore: Now, Your Honor, I think there are some other facts that are relevant to the Board of Education and the School [51] System that have been developed by the interrogatories and perhaps we can go into that.

Judge Bell: What is that?

Mr. Owens: Mr. Moore suggest that we go into the interrogatories and some of those facts as established.

Judge Bell: All right, will you let the court have a set of the interrogatories and answers? Mr. Owens, this man here, Durham, his answer, he is on the Grand Jury— Oh, I see, he has moved out of the County. Moved to Greene County. His daughter is going to Greene County.

Mr. Owens: That's correct, Your Honor. There are three Grand Jurors, Your Honor, Mr. Bacon—

Mr. Moore: —I thought we would stick with the Board of Education.

Judge Bell: Yes, lets finish that, first.

Mr. Owens: Excuse me. I thought Your Honor was through. I thought you were looking at the Grand Jury.

Judge Bell: I was. I have gone back. I put it down though. All right, Mr. Moore, what do you find significant about this set of answers, other than the same things you have already established?

Mr. Moore: Your Honor, with respect to No. 10 "Give the names, addresses and educational back ground of races of those who teach in the public school of Taliaferro County, Georgia." The answer to that is Exhibit "A" which does show the race and [52] schools to which the teachers are attending.

Judge Bell: They don't have anybody with a Master's Degree. All right. Now, what is the Georgia Law on that? What does the Georgia Law provide about the qualification of a School Board Member? That they have to be learned in the elementary branches of the English Language?

Mr. Moore: Yes, sir.

Judge Bell: What else?

Mr. Moore: You have to be a freeholder, and favorable to the common school system, Your Honor, and of good moral character and a freeholder.

Judge Bell: How can anybody serve on the School Board who is not sending their children to a school in the county, if they have children, how can that show that they are favorable to the common school system? Does that mean they favor Greene County or Wilkes County? Do any of these school board folk have children, any of of these school board members have children?

Mr. Owens: May it please the Court, lets take them one by one. Mr. Jones is no longer a member, so he is out of the picture.

Judge Bell: Lets get down to the new members. Lets start out with Mr. Chapman.

Mr. Owens: Mr. Chapman, he has no children.

Judge Bell: How do you know he is favorable to the common school system?

[53] Mr. Owens: May it please the Court, I assume that the Grand Jurors who know him would ascertain that.

Judge Bell: How about Mrs. Willie Mae Fambrough?

Mr. Owens: She has no children, Your Honor.

Judge Bell: Forrest Hill?

Mr. Owens: May it please the Court, no question was directed by the plaintiff to Mr. Hill, Mr. Pittman or Mr. Beazey, and I have not ask them—

Judge Bell: Could you advise the Court if they have children and, if so, are they in school in Taliaferro County?

Mr. Owens: I will ascertain that, Your Honor. I have not. I know they are not in public school in Taliaferro County, if they have any, and I will have to ascertain that.

Judge Bell: It's hard for me to imagine anybody being in favor of common schools and not send their children to common schools. Those are the qualifications, to be a freeholder, be in favor of the common schools, and have

an elementary knowledge of the elementary branches of the English education.

Mr. Owens: That's correct.

Judge Scarlett: And a good moral character, too.

Judge Bell: I don't think it says that. You don't have to be of good moral character.

Mr. Owens: That's in the statute, Your Honor. It is not in the constitutional provision.

Judge Bell: All right. What do you think that means, Mr. Owens, to be learned in the elementary branches of the English [54] Education? What kind of an education does that mean you ought to have to be on the school board, or does that prove anything? What does it mean?

Mr. Owens: May it please the Court, I guess if it were up to me to define that it might be one thing, and it could be up to the Members of the Grand Jury to—

Judge Bell: Mr. Evans probably can tell us.

Mr. Owens: It is on the Grand Jury to define that. They might have a different connotation, so I think we might—

Judge Bell: —We will let Mr. Evans argue that. He is representing the State. He is interesting in preserving these statutes.

Mr. Owens: He is, Your Honor.

Judge Bell: He probably can give us some enlightenment on what that means. Now, what was question No. 6?

Mr. Owens: That was with reference to the named individuals and their children, if it please the Court.

Judge Bell: Now, who was he?

Mr. Owens: Well, Mr. Cranston Jones, who is no longer a member, has a child who attends the Jonesboro High-school.

Judge Bell: All right, who is "D"?

Mr. Owens: That's Horace Williams, Jr., if it please the Court, and he is no longer a member.

Judge Bell: Is he any relation to the School Superintendent?

[55] Mr. Owens: I do not know. He is not, according to Mrs. Williams.

Judge Bell: Then he has resigned since you found out that he had three children going to Greensboro High-school?

Mr. Owens: He resigned in September 1967, Your Honor.

Judge Bell: When did he start his children to Greensboro Highschool?

Mr. Owens: I do not know the date, Your Honor.

Judge Bell: Now, how can those children attend Greensboro Highschool and the Negro children not be allowed to?

Mr. Owens: I do not know the facts surrounding that, Your Honor.

Judge Bell: Anybody here representing Greene County Schoolboard? (No response) In other words, there are two men on the School Board whose children were going outside the County have resigned.

Mr. Owens: That's correct, Your Honor. Whether they were going outside the County before or after they resigned, I do not know, Your Honor.

Judge Bell: Well, find that out and let us know so we can stipulate that. Lets see. Now, that's Cranston Jones and H. E. Williams, Jr. You say that Chapman and Mrs. Fambrough have no children.

Mr. Owens: That's correct, Your Honor.

Judge Bell: Do they have any grandchildren? Tell us about that.

[56] Mr. Owens: Your Honor, they have never had any children, therefore they do not have any grandchildren.

Judge Bell: All right. What is question 22?

Mr. Moore: Now, Your Honor, it would be interesting to find out whether the Superintendent has any children that—

Judge Bell: —Well, we can't go into that, because she is elected by the people. She doesn't have to meet the same standard.

Mr. Moore: Yes, sir. It might be—

Judge Bell: —I think she had a boy going to a Pref School the last time we were down here, but that would not be the same.

Mr. Moore: It might be somewhat of a test whether or not she is favorable to the common schools.

Judge Bell: Well, she doesn't have to be favorable to the common schools.

Mr. Moore: I mean whether the Board of Education—

Judge Bell: —Well—

Mr. Moore: —Whether the Board of Education is favorable to the common schools, continuing with the Superintendent.

Mr. Owens: No. 22, Your Honor, is "Do the Public Schools of Taliaferro County receive any funds from the Federal Government, if so, state the amount.

Judge Bell: \$63,000.00.

Mr. Owens: That's correct, Your Honor. That was the [57] total amount that was received.

Judge Bell: Now, is that all the funds that they would be entitled to. The last time we were down here HEW was holding up some funds, withholding funds, from Taliaferro County. Did they ever release the funds?

Mr. Owens: I believe they did, Your Honor.

Judge Bell: Do you know about that, Mr. Moore?

Mr. Moore: No, sir, I don't.

Judge Bell: They had quite a quarrel about that, or we had quite a quarrel about that, you know.

Mr. Moore: HEW just comes and go.

Judge Bell: Well, they were holding up the funds.

Judge Scarlett: I think Mrs. Williams nodded her head back there.

Mr. Owens: She nodded affirmatively, Your Honor, that they were released.

Judge Bell: Taliaferro County is getting all of the federal funds that they are entitled to now then?

Mr. Moore: Maybe, Your Honor. There are about 452 different federal programs.

Judge Bell: Oh, I know, but they haven't got the money to hire somebody in Washington to represent them. The City of Atlanta has even got a man on the payroll in charge of finding federal funds because there are so many federal funds, so many agencies, and unless you are a big operation and can hire you a [58] man to advise you and ferret them out there is no way to get all the federal funds.

Mr. Moore: Perhaps if we had a school board that was disposed to the Public School System, whatever that means, they would ferret more of these funds.

Judge Bell: How would they do it? Go to Washington?


Mr. Moore: Well, there are statutes and—

Judge Bell: —Do you know the amount that Fulton set up in Washington to employ some one to find federal funds?

Mr. Moore: Yes, sir.

Judge Bell: A little place like Taliaferro County couldn't afford that.

Mr. Moore: They can get a lot of this information from the Office of Government Printing. You could hire a specialist if you wanted to create a job, but actually you



could get this information from the Office of Government Printing.

Judge Bell: All right, lets see now. Lets finish this list up. Now, in Taliaferro County, you are operating two school buildings?

Mr. Owens: That's correct, Your Honor.

Judge Bell: That's Taliaferro County Elementary School and Taliaferro County Highschool. Now, which one use to be the Alexander Stephens Institute?

Mr. Owens: The Elementary, Your Honor.

Judge Bell: That's the only school buildings in the [59] County as I understand, is that true?

Mr. Owens: As far as I know.

Mr. Moore: Except for the old, the original school building that is right across from the Gym, and it is now the private school. I think that was sold a long time ago.

Judge Scarlett: Whatever became of the Alexander Stephens School?

Mr. Moore: It's turned over now, Your Honor.

Judge Bell: That's the Taliaferro County Elementary School.

Judge Scarlett: I didn't catch it. All right.

Judge Bell: Question 25. You have an average daily attendance in the Elementary School of 283. Highschool a 175. Now, can any one advise us how many white children are attending the private schools?

Mr. Owens: Just one minute, Your Honor. I think I can give you the approximate figure. Answer No. 28, Your Honor.

Judge Bell: 28?

Mr. Owens: Yes, sir. It is approximately 72 pupils who attend the private schools.

Judge Bell: The first through the tenth grades.

Mr. Owens: That's correct, Your Honor.

Judge Bell: Now, question 26: \$267,000.00. Is that State support? What is that?

Mr. Owens: May it please the Court, that is the total budget and in item 27 it is itemized as to where the money came [60] from. That's a budget figure. It is not necessarily a cash figure, Your Honor.

Judge Bell: I see. It says \$9,000.00 of it locally.

Mr. Owens: Yes, sir. •

Judge Bell: Now, what is the tax. What is the levy? What is the number of mills?

Mr. Owens: I am sorry, I don't know, Your Honor.

Judge Bell: Well, find out. Let's get that in the record. As somebody. Seven and three quarters, I believe she said.

Mr. Owens: Yes, sir.

Judge : All right, let's get two more questions answered. The next one is "What was the levy when the whites were attending the schools? And the second one is "Has there been any recent re-evaluation of the property?"

(Note: Mr. Owens conferring with one of his clients.)

Mr. Moore: Your Honor, that would be subject of another law suit, because a North Carolina firm that did these evaluations is suing the county. I think Your Honor had something—

Judge Scarlett: —I have been hearing about it. I haven't got the pleadings yet.

Mr. Owens: Mrs. Williams says that the millage is now lower, that due to the re-evaluation the county is getting more tax funds in than it was in the preceding years.

Judge Bell: Judge Morgan suggests that the best thing to do is to get the total old digest and the total new digest, [61] total old levy and the total new levy. Let us have that sometime this morning.

Judge Scarlett: Whose doing all of that—checking?

Judge Bell: They have got a dozen experts sitting out there in the audience. Judge Morgan asks this question: In any recent year have ad valorem taxes levied for school purposes exceeded \$39,000.00? That would be a good approach to it.

Mr. Owens: For the last five years, you would say, Your Honor?

Judge Bell: Yes. That might be easier. You are liable to have to call up Crawfordville to find the tax digest.

Mr. Owens: I might have to do a lot of calling.

Judge Bell: This \$39,000.00, Mrs. Williams probably knows about that. All right, now is there anything else about the schools we need to get into the record?

Mr. Moore: Your Honor, I think the Court might want to look at the number of teachers before and after. Questions 31 and 32. Now, 31 is "How many teachers are there in the public schools of Taliaferro County today"? The answer is "Eighteen."

Judge Bell: All right.

Mr. Moore: "And how many teachers were in the public schools of Taliaferro County in 1964?" And the answer is "Thirty three."

Judge Bell: Down from 33 to 18.

Mr. Owens: Correct:

Judge Bell: Of course, that's only relevant if we know [62] the number of students they had back in 1964. The Court can offhand take notice from the other record that

there were a good many more in 1964 than there are now. All right, what else?

Mr. Moore: Now, there is another thing that should be noted also, that is, that the Board of Education meets regularly once each month which is the answer to interrogatory No. 34.

Judge Bell: Yes.

Mr. Moore: And in the answer to number 33 they received for their services \$20.00 per month, and in answer to No. 35 the meetings are held at 10:00 o'clock A.M., on the first Tuesday in each month in the office of the County School Superintendent at the County Courthouse in Taliaferro County.

Judge Bell: Right.

Mr. Moore: And they answer that meetings are open to the public and minutes are kept.

Judge Morgan: Does the records show that the law provides what date the County School Board of Education sets or recommends the tax rate?

Mr. Owens: At what time of the year, Your Honor?

Judge Morgan: Yes, what time of the year?

Mr. Owens: I don't know, but there is a statute to that effect.

Judge Morgan: It has to be sometime early enough to get out the tax notices.

Mr. Owens: It is usually done in the spring of the year, Your Honor. There may be a statute to that effect, but in looking [63] at the statute in general I did not see one that required you to ascertain by a particular date.

Judge Bell: It is done each year, though.

Mr. Owens: Done each year in the spring.

Judge Morgan: And whoever the levying official is, whether it is the ordinary or the County Commissioners

it has to accept whatever that is up to 20 mills? That's the law, isn't it?

Mr. Owens: I believe generally that's the way the statute reads, Your Honor. There is some dispute as to whether they have to accept it or not.

Judge Morgan: Well, now, the case on that point, as I recall, from Wilkes County a number of years ago they are required to accept whatever the recommendation of the Board of Education is, the levying authority of the county.

Mr. Owens: I am not familiar with that statute, Your Honor.

Judge Morgan: I think that is what we are fighting about in this case, or it is going to get down to it. If you have a school board that will levy a tax up to whatever they see fit that—

Mr. Moore: —Yes, sir, the taxation—

Judge Bell: Now, let's go over to the Grand Jurors situation. I looked at these answers.

Mr. Moore: Your Honor—

[64] Judge Bell: —Have you got something else on the schools?

Mr. Moore: I just wanted to say that I think the law is that the school board recommends the millage, the amount of the millage, and that is in Code Section 32-1118.

Judge Morgan: And they are required to levy that tax according to the recommendation, whoever the levying authority is, whether it is the Ordinary or the County Commissioners, they are required to do that.

Mr. Moore: Yes, sir.

Judge Bell: All right, I think that's about as much information as we are going to be able to put in on the schools, unless some one, Members of the Court, or Counsel can think of something else we ought to get in the record.

Mr. Moore: We want to put this in; that the plaintiffs in this case have been unsuccessful in their efforts to present grievances to the Board of Education.

Judge Bell: Wait a minute now. They are not going to stipulate that.

Mr. Owens: No, sir, we can't do that.

Judge Bell: So you are going to have to prove that. Now, what else was it we said that you would have to prove? Questions 9 and 10?

Mr. Moore: Yes, sir.

Judge Bell: Wait a minute now. Have one of your associates to keep record of these things. Questions 9 and 10 [65] on the Request for Admissions, you want to offer proof on that. Now, you want to offer some proof on your complaints, processing of complaints to the school board.

Mr. Moore: Yes, sir.

Judge Bell: Now, what else do you think you need to offer evidence on? One thing we are going to have to have some proof on is that Mr. Turner lives in Taliaferro County and his daughter is in school in Taliaferro County School System. Can you stipulate that?

Mr. Owens: May it please the Court, as far as I know we can.

Judge Bell: All right, we will stipulate that. I wonder if it makes any difference whether Mr. Turner was a freeholder or not?

Mr. Moore: It might or might not.

Judge Bell: It says that he was a registered voter. I don't know what that has to do with it, unless you are just in the habit of putting that in a complaint.

Mr. Moore: The reason for that, the law was changed, you see, to require the jury list to be selected from—

Judge Bell: —Registered voters?

Mr. Moore: Registered voters.

Judge Bell: All right. Mr. Owens wouldn't have any way of knowing whether he was a registered voter or not, and you haven't got any clients that are in the voting business?

Mr. Owens: No, sir. Your Honor, I would prefer to [66] look at the list unless he himself can state whether or not he voted at the general election.

Judge Bell: Mr. Turner, stand up there a minute. Did you vote in the last general election?

Mr. Turner: Yes, sir, I did.

Judge Bell: You did?

Mr. Turner: Yes, sir.

Judge Bell: All right.

Mr. Owens: We are satisfied, Your Honor.

Judge Bell: All right, they are satisfied. We can stipulate that. Now, let me ask him one other question. Mr. Turner, stand up again. Are you a freeholder? That means do you own any real estate, not personal property, but real estate?

Mr. Turner: Yes, sir.

Judge Bell: All right.

Mr. Owens: He does.

Judge Bell: Well, let's get that in as a fact. I don't know if that is significant at all, but he is a freeholder. All right.

Mr. Moore: I wonder if we could stipulate—

Judge Bell: —Now, you stipulated that Sandra Juanita Turner is in school?

Mr. Moore: Yes, sir.

Judge Bell: In the Taliaferro County School System?

Mr. Moore: Yes, sir.

[67] Judge Bell: Is that so, Mr. Owens?

Mr. Owens: Yes, sir.

Judge Bell: All right.

Mr. Moore: Your Honor, I wonder if we could stipulate whether or not there is a PTA in Taliaferro County?

Mr. Owens: We don't see if that is material to anything.

Judge Bell: I don't think so either. Do you think that has some significance in your case?

Mr. Moore: Well, it involves parents in—

Judge Bell: —They can get up a PTA if they want to get up one.

Mr. Moore: I don't know, Your Honor. I think they have to have some connection with the school.

Judge Bell: Oh, now, we don't want to get off into that. We have enough problems without getting off into the PTA business.

Mr. Moore: Well, it is one of the—

Judge Bell: —I once attended a meeting of the PTA, once.

Mr. Moore: Well, at least Your Honor had the privilege of going.

Judge Bell: That's right.

Mr. Moore: Even though you were not charmed to come back.

Judge Bell: Right.

Mr. Owens: May it please the Court, we think that is [68] immaterial and we don't think they can show that they have been denied the privilege of establishing a PTA.

Judge Bell: Well, when he puts the proof on with regards to his inability to have a complaint processed to the school board, if he can show that he tried to get a PTA organized in Taliaferro County and the Board wouldn't allow him to do so, he can do that. That would fall under the heading of a general complaint.

Mr. Moore: I believe the next matter that would be proper to go into the answers of the defendants with reference to the Grand Jurors in their interrogatories.

Judge Bell: All right. But just let me summarize over them. I read them. You sued three men and one has never been a Grand Juror, one has moved out of the County and that leaves one who was a grand juror in 1965?

Mr. Owens: 1956, Your Honor.

Judge Bell: 1956. Well, you are on about as thin a ground as you can get on.

Mr. Moore: Your Honor, one of the defendant grand jurors served in 1965.

Judge Bell: I thought he had left the county.

Mr. Owens: '56 was the date, I think.

Mr. Moore: 1965.

Judge Bell: He says that in '65 he was a grand juror.

Mr. Owens: May I transpose the figures on that?

Mr. Moore: He was a grand juror in '67.

[69] Mr. Owens: Let me see. Yes, he did say '65 and prior thereto.

Judge Bell: Mr. Durham now says he lives in Greene County.

Mr. Owens: That's correct, Your Honor.

Judge Bell: He says in '67, but he immediately left.

Mr. Moore: W. W. Fouche is a Member of the Grand Jury at the present time.

Judge Bell: Where do you see that?

Mr. Moore: Well, we have the jury list.

Mr. Owens: Of the present grand jury?

Mr. Moore: Yes.

Mr. Owens: Is that the jury list or the list of the Grand Jury?

Mr. Moore: That's the jury list.

Judge Bell: You mean he is on the Master List?

Mr. Moore: Yes, sir.

Mr. Owens: That doesn't put him on the present Grand Jury, Your Honor.

Judge Bell: He may never serve.

Mr. Moore: We weren't able to get the Grand Jury list in advance of—

Mr. Owens: —May it please the Court, I think the record will show that he didn't ask for a list. We would have been delighted to have gotten it.

[70] Mr. Moore: In advance of the trial.

Judge Bell: Well, he admits here that "I am on the list."

Mr. Owens: Yes, sir.

Judge Bell: But we know that the list means the Master List, or the roll.

Mr. Owens: Right. I don't think the associate understood the difference, Your Honor.

Judge Bell: And the point is that he is not on the Grand Jury. He has not been chosen as one of the 23 to serve on the Grand Jury.

Mr. Owens: That's right. That's correct.

Mr. Moore: We don't contest that, Your Honor.

Judge Bell: All right, we have got that straight now.

Mr. Moore: We are suing him as class, and he has to stand or fall on whether or not he can represent—

Judge Bell: —I tell you, Mr. Moore, you are on mighty thin ground on the Grand Jury part of your complaint, and you are also on thin ground for damages, but we are not going to make any ruling on that right now until we can study it out some more. The Grand Jurors are named, they are really made parties just like we made the School

Board Members in Warren and Wilkes and Greene Counties, they were made parties for purpose of obtaining relief. You sued them for that purpose, and whether or not the Grand Jury list is such an entity that you [71] can subject a member, or somebody whose name is on there, to be sued is something about which I have grave doubts.

Mr. Moore: I take it from that that the Court isn't saying that we should bring in additional parties who are members of the Grand Jury?

Judge Bell: No. If you brought in 25 I don't think it would make any difference.

Mr. Moore: Just the sufficiency of this approach to the case—

Judge Bell: —Right.

Mr. Moore: And it is a question of law rather than the necessity of bringing in other party defendants—Grand Jurors.

Judge Bell: Right. And I would have serious doubt if the Court would have the—well, I wouldn't say didn't have the power, but I have serious doubts that the Court could order a particular Grand Jury to appoint people to some office, such as the Board of Education, because that is such a discretionary thing about who they would pick. Now, the Court might vacate the entire school board, but I doubt that. I don't know as it helps your case any to have the Grand Jurors in but we won't rule on that right now.

Mr. Moore: Your Honor, I might say that at least two of these Grand Jury members that we did name admitted taking part in the school board election.

[72] Judge Bell: That's right. We know that. I know that, but that doesn't help your case any. You see, you are missing the point. The point is that just the mere fact that

you have something to do with the Grand Jury doesn't prove anything about what you can do to get the relief that you are seeking. That's what bothers the Court.

Mr. Moore: The adequacy of the named defendants to represent people known as the Grand Jury.

Judge Bell: Right.

Mr. Bloch: Now, that brings up the very question that I was going to call to the attention of the Court. If the Court should decide that there is such a thing as the Grand Jurors being sued as a class, I am sure that the Court will bear in mind that the present Grand Jury System in Georgia and the present class of people who are selected as jurors and consequently Grand Jurors didn't arrive until March 30th, 1967.

Judge Bell: We know that. There might be some of the same people on the list but it would be a happenstance.

Mr. Bloch: That's right.

Judge Bell: Everything has been done over.

Mr. Bloch: That's right.

Judge Bell: All right. Now, the Jury Commissioners, let's move to the Jury Commissioners. Have you got interrogatories on that too?

Mr. Moore: Yes, sir.

[73] Judge Bell: That all Jury Commissioners are white and they are appointed by the Superior Court Judge, Judge Stephens?

Mr. Owens: That's correct.

Judge Bell: And there are no vacancies?

Mr. Owens: No, sir.

Judge Bell: When was the last man that has been appointed?

Mr. Moore: There is a vacancy because there is only five Commissioners, and the law requires six.

Judge Bell: There is one vacancy?

Mr. Owens: Not that I know of.

Mr. Moore: If they have five members, they have got a vacancy.

Mr. Owens: May it please the Court, I think what makes the difference is at one place they mention five people and in another place there is six in the law that sets up the Jury Commissioners. Just a minute, Your Honor. The missing individual is Mr. Reuben Jones who is serving which makes six, Your Honor.

Judge Bell: There are six but only five is sued.

Mr. Owens: Five named in the complaint.

Judge Scarlett: Only five were sued?

Mr. Owens: That's correct. There was one more who was not sued, Mr. Reuber Jones.

Judge Bell: Mr. Moore, don't you think you ought to [74] amend and add him as a party and have him served?

Mr. Moore: Yes, sir.

Judge Bell: Just so you get it all in order, Reuben Jones is this gentleman's name?

Mr. Owens: That's correct, Your Honor.

Judge Bell: You have got 130 on the Grand Jury list, and the revision was completed in 1967?

Mr. Owens: That's correct, Your Honor.

Judge Bell: All right. You don't know how many are Negroes and how many are White?

Mr. Owens: No, Your Honor.

Judge Bell: All right. You are going to prove that.

Mr. Moore: Yes, sir.

Judge Bell: All right. Mr. Moore, in answer to number 12, you asked then about the significantly identifiable groups from Taliaferro County and they say they have got White persons, Negro persons, Catholic, Baptists, Meth-

odists and Presbyterians. Under the Supreme Court decisions you have white collar workers, blue collar workers. That's another identifiable group. Are you making any point about that? Wage earners and salary workers?

Mr. Moore: Your Honor, our contention is that—

Judge Bell: —You just want to proceed on race without getting into other areas.

Mr. Moore: We can prove the whole thing, Your Honor.

Judge Bell: Well, you will probably have a hard time proving anything about the blue collar workers in a county this [75] size.

Mr. Moore: We do have background information for the Court, a demography description of the community.

Judge Bell: All right.

Mr. Moore: And we would like to tender—

Judge Bell: —Well, we will get to the evidence when you put your witness on.

Mr. Moore: All right, sir.

Judge Bell: Oh, there is one thing I want to ask: Mr. Owens, what is your age bracket for jury service—21 to 65?

Mr. Owens: That's my understanding.

Judge Bell: Is that so, Mr. Moore? Do you know anything about that?

Mr. Moore: I know it's 21—

Judge Bell: —In some places they put it up as high as 25, because young folks are in school, and they say this creates sort of a problem when you have to call folks and then have to take them off.

Mr. Owens: Well, may it please the Court, in this instance the Jury Commissioners, as a whole, did not say "we are going to step the age limit up," as a practical matter because of one man being in the service or being here. They may have done that.

Judge Bell: But you think the broad outline was from 21 to 65?

[76] Mr. Owens: Yes, sir.

Judge Morgan: Is that the Grand Jurors?

Judge Bell: Well, that's all, the whole list. They just make one list.

Mr. Moore: Well, under the new law you are eligible to go on the list at 18.

Judge Bell: Who said so?

Mr. Moore: Well, it is taken from the voters list.

Judge Bell: Well, they haven't changed the—

Mr. Moore: —Then that would be a ground for disqualification because you don't meet the age limit, qualification under a different statute.

Judge Bell: You mean you have got to put them on and then take them off?

Mr. Moore: Well, I don't think the Jury Commissioners is going out looking at the age when—

Judge Bell: —You can put a man under 21 on the Jury, can't you?

Mr. Owens: Yes, sir.

Mr. Moore: He wouldn't get on the Jury, he would just get on the list.

Judge Bell: Well, what business have they got on the list?

Mr. Moore: Sir?

Judge Bell: What business is it to put him on the [77] list if he is not but 18? Why do that?

Mr. Moore: Well, on this voters registration list they have got people on there who are 18.

Judge Bell: Well, you are operating on the theory that they have got to use a random choice. You are not in the federal court now.

Mr. Moore: We say as a practical matter, Your Honor.

Judge Bell: This is the state Jury list, they don't have to use a random choice that I know anything about.

Mr. Moore: Well, it has to be a true cross section of the community.

Judge Bell: I know. Do you happen to have available a copy of the Civil Rights Bill pending in the Senate now with the Jury section as it applies to state courts?

Mr. Moore: No, sir, I don't have that section.

Judge Bell: Do you have that Mr. Bloch?

Mr. Bloch: I don't have it here with me. I can get it sent over mighty quick.

Judge Bell: Well, suppose you send one to me in Atlanta at my office. I had it somewhere but I don't know where it is. I would just like to see the difference in what the Congress is trying to require between a federal list and a state list, because I think that is pretty important in this case. They are debating it right now in the Senate. It has got a Jury section in it.

Mr. Moore: I just wanted to say, Your Honor, what I was [78] trying to point out is that as a practical matter, since 18 can get on the voters list and at 18 you can vote that you could very well be selected from that list for Grand Jury service. However, when you actually summons them they would be struck because they were less than 21.

Judge Bell: But you don't go about doing things that way, Mr. Moore. You don't go and put a lot of people on the Jury list at 18 just to have the fun of taking them off later on. You just put on the folks that are going to serve some day, that are eligible to serve. On your theory you could put all the people in the penitentiary on the Jury and all the felons so you could take them off later. You

would go get all kind of people that were disqualified and put them on so you could later take them off. That wouldn't be any way to make a Jury list up.

Mr. Moore: Your Honor, for the purpose of our case, we wouldn't be hurt either way.

Judge Bell: All right.

Mr. Moore: To put them on or take them off.

Judge Bell: All I want to know is that it is from 21 to 65.

Mr. Owens: Yes, sir.

Judge Bell: That is the age bracket they use.

Mr. Owens: Yes, sir.

Judge Bell: All right.

Mr. Owens: If there is any difference in that I will [79] advise the court.

Judge Bell: All right. Now, sixteen. All right, I believe that's all we need on—

Mr. Moore: —Your Honor, I think their answer is that there are approximately 2,000—

Judge Bell: —Voters.

Mr. Moore: Voters in the county.

Judge Bell: Well, that is not exactly right. It is about 2500, as I recall.

Mr. Moore: That includes dead people, Your Honor.

Judge Bell: There couldn't be that many voters. How many voters are there in Taliaferro County?

Mr. Owens: May it please the Court, that was the figure the Jury Commissioners gave me that they thought were on that list that was used in that election.

Judge Bell: How many people live in Taliaferro County—about 3500?

Mr. Owens: That's correct, Your Honor.

Judge Bell: And there were over 2000 people voting?

Mr. Owens: They are on the list, Your Honor.

Judge Bell: I don't know, but as registered voters that means that many people over 18.

Mr. Owens: Yes, Your Honor, but I think there is a little difficulty there. They know that there are some people who maybe have moved away but have not registered in another [80] county and therefore their names have not come off the list. They may not have used that individual's name.

Judge Bell: How many—

Mr. Owens: —About 2000 on the list.

Judge Bell: I saw somewhere, I thought, Mr. Moore, where there were more Negroes voters than White in Taliaferro County, registered to vote.

Mr. Owens: It was an allegation, I think, made by the Plaintiffs.

Judge Scarlett: I noticed that in the papers, in one of the Savannah papers.

Judge Morgan: It is alleged in his petition.

Mr. Owens: It is alleged in his petition, Your Honor. We show the population. In the 1960 Census, Your Honor, which I have a copy of—

Judge Bell: —Well, you have got 1172 Negroes registered to vote and 1063 Whites. That's 2231. How many people in the County—three thousand and what?

Mr. Owens: 3,370, Your Honor.

Judge Bell: 3,370. Well, that would be a pretty good average, I would say, out of the voters.

Mr. Owens: Mighty good average.

Mr. Moore: Your Honor, we have a study that was made that shows—

Mr. Owens: Whose study is this now?

[81] Mr. Moore: Southern Regional Council.

Judge Bell: What is it about?

Mr. Moore: It is through 1960, purporting to show the number of registered voters in Georgia counties, and for Taliaferro County they list Whites' voting age population as 917, and Negro voting age population as 1073. White registered 1052. Negro registered 1,165.

Judge Bell: In other words, you have got more registered in each case than there are people in the county?

Mr. Moore: Yes, sir. This is for 1960, or through 1966.

Mr. Owens: What's the source of that information?

Mr. Moore: The Southern Regional Council.

Mr. Owens: But where did they get those figures is what I want to know?

Judge Bell: Well, they can get them from Ben Fortson's office, the number of registered voters, that is all that is.

Mr. Owens: The number of people of voting age, Your Honor.

Judge Bell: Well, you can get that out of the census.

Mr. Owens: Yes, sir.

Judge Bell: That's not significant. Now, we will close off the Grand Jury part of the evidence now. Now, Mr. Owens, do you have some fact that you want to get stipulated?

Mr. Owens: May it please the Court, right at the moment we do not.

[82] Judge Bell: Mr. Moore, do you know of anything else that you want to stipulate? I know you have got some evidence you want to offer.

Mr. Moore: Yes, sir.

Mr. Bloch: I sorta want to see where we are.

Judge Bell: Well, let us do this, let us take a ten minutes recess and that will give you—

Mr. Bloch: —I would like to ask the Court this question; I wrote it down and I think it is right important: Is the Court preparing now to hear this case on the basis of an application for a preliminary injunction, subject to a ruling on all motions and a right for us to file our answer thereafter as provided by the Rule, is that a correct statement?

Judge Bell: Well, we don't know yet. We haven't got to that point.

Mr. Bloch: I see.

Judge Bell: If we can't get counsel to agree to let this be—to let the case be submitted for final hearing on the merits we will have to come back over here later on and have another hearing. That is what we want to talk about when we get back. We are not quite to that point yet. The Court will take a ten minutes recess.

The Marshal: Take a ten minutes recess.

(Note: At this point a recess was then had from 11:25, A. M., until 11:35, A. M., of the same morning at which time the proceedings were resumed as follows on the next page.)

[83] Judge Bell: All right.

Mr. Owens: Does the Court desire to receive the facts that the Court asked about?

Judge Bell: Yes, sir.

Mr. Owens: May it please the Court, with reference to Mr. Horace Hill, his children are all grown. Mr. Moore Pittman, his children are all grown. Mr. Larry Beazey has no children.

Judge Bell: Wait a minute. Pittman—

Mr. Owens: His children are grown.

Judge Bell: And Beazey has no children?

Mr. Owens: That's correct, Your Honor.

Judge Bell: All right.

Mr. Owens: Now, Mr. Chapman, I stated that he had never had any children. As I understand it, his children are grown and married. I was wrong on that, Your Honor.

Judge Bell: Now, what I am getting at, do any of these folks have any grandchildren going to this private school?

Mr. Owens: I will have to ascertain that. I have not attempted to go that deep into it, Your Honor. Mr. Cranstons Jones, the individual whose child goes to school in Jonesboro, as I understand it the child has moved to Jonesboro and resides in Jonesboro with relatives.

Judge Morgan: In Clayton County, Jonesboro, Georgia?

Mr. Owens: And Mr. Horace Williams has now taken up residence in Greene County and his child goes to the Green County [84] School, Your Honor.

Judge Bell: Well, find out if any of these people have grandchildren going to a private school. It is sorta like an absentee landlordism or something to have an all white school board for an all Negro school and the white school board members families going off somewhere else to school.

Mr. Owens: All right, we will check into that, Your Honor.

Judge Scarlett: And it is also unusual for the grand parents to have the children, isn't it?

Mr. Owens: Well, yes, sir. Now, with reference to the Tax Digest, Your Honor, the old Tax Digest before re-evaluation was one and a half million dollars.

Judge Bell: All right.

Mr. Owens: And these are all rough figures, Your Honor, from Tax Commissioner Hill, she doesn't have the exact figures.

Judge Bell: All right.

Mr. Owens: The new Digest is Four point Seven Million Dollars.

Judge Bell: All right.

Mr. Owens: The old levy was 35.24 mills.

Judge Bell: That's the total there. All right.

Mr. Owens: That's correct, Your Honor. The new levy is 18.05 mills.

Judge Bell: All right, what was the school board levy, the old?

[85] Mr. Owens: I only got that in dollars, Your Honor.

Judge Bell: No. I mean how many mills do your school board levy? Fifteen before and now Seven and Three-quarters.

Mr. Owens: I think, Your Honor, the question was whether during the last five years the school board had gotten more than \$39,000.00.

Judge Bell: Yes.

Mr. Owens: The figures \$39,000.00 except last year, when it was around 41 to \$42,000.00. I don't have the exact figure.

Judge Bell: 1967?

Mr. Owens: Yes, sir, the last tax years.

Judge Bell: Now, what's the \$39,000.00? Where does that get in? I thought that was for last year.

Mr. Owens: It has been at that figure every year, Your Honor.

Judge Bell: Up to 41—it has gone up now?

Mr. Owens: I don't know whether these figures are on a calendar year or school year.

Judge Bell: Ask Mrs. Williams.

Mr. Owens: When the state re-evaluated the public utilities it caused the change.

Judge Bell: All right, I see.

Judge Morgan: In other words, there has been no reduction in the amount collected locally—

Mr. Owens: That's correct, Your Honor.

[86] Judge Morgan: —And the reduction was caused by this Public Service Commission reducing the valuation on the public utilities.

Mr. Owens: That's correct, Your Honor.

Judge Morgan: All right.

Mr. Owens: And we will check into the grand jury.

Judge Bell: All right. Now, Mr. Moore, suppose you put your—well, wait just a minute. Mr. Evans has got a chance to say something. Do you want to argue anything about these statutes now, or do you want to wait until later?

Mr. Evans: Whatever the Court prefers. They will match in with the Three Judge Court, may it please the Court.

Judge Bell: Well, that's right, one of them is a freeholder argument and the other one is whether or not these statutes are so vague on their face—

Mr. Evans: Well, there is a federal attack in the petition, of course, including one that appears to be the contention that you cannot appoint the school board, that they must be elected.

Mr. Evans: That's been ruled on, as Your Honor knows in Wallis Against Blue in the Northern District—

Judge Bell: —Well, you need not argue that.

Mr. Moore: Well, that's reading into the petition, he—

Judge Bell: Well, they might have gotten that from [87] newspaper. Somebody has been putting it in to the newspapers.

Mr. Evans: Of course, the petition is perhaps a denial of our due process because of its vagueness. What appears from the petition they are attacking the fact that the board is elected and also in the brief they get into points about electing or appointing.

Mr. Moore: That's really running the robin around the tail. He made some off statements that we were attacking this thing on the basis of Wallis Against Blue, that you couldn't have an election appointing the school board members. We are not attacking that. We are attacking the fact that this is an election and we have been fenced out of it.

Judge Bell: That is what I understood his theory of it is. What do you have to say about the qualifications set out in the statutes? Are they in the statute or in the constitutional?

Mr. Evans: Both, Your Honor.

Judge Bell: One being that a man must be a supporter of public education, whatever that is.

Mr. Evans: Your Honor, if we will take them one at the time. The freeholder requirement is in both the constitution and in the statute. I start out by saying that I suspect this is probably historical vernacularism and probably stems from the days of "substantial people", people who might have an interest in community work, generally speaking, owners of realty.

Judge: Well, it was after the pre-revolutionary days [88] when you not only had to be a freeholder, but you had to own a certain amount of property to be allowed to vote.

Mr. Evans: Yes, sir.

Judge Bell: And there has been a gradual change in history in requirements since that time.

Mr. Evans: Yes. Today the usual requirement is that if a person handles money he must post bond. This is the normal way of handling it. However—well, I, myself, might question the wisdom of this requirement, I don't have to justify it as far as being wise. All I have to do is to point out to the court—

Judge Bell: —Whether or not it is constitutional?

Mr. Evans: Right.

Judge Bell: That is the only thing we are interested in.

Mr. Evans: Yes, sir. I think that it is constitutional. Generally speaking, of course, to start with the Legislature subject to the initial right of the people to set qualifications in their constitutional, which they have done, establish any reasonable qualification that may be proper. So far as I have been able to discover the courts have always, in the absence of constitutional inhibition, upheld property qualifications. State court decisions would be such as DeCrab Vs Strover, 287 New York State, 22. That's 1936.

Judge Bell: Have you got a federal decision?

Mr. Evans: Yes, sir, the closest thing we have on [89] the federal is the United States Supreme Court Decision is Vought Vs Wisconsin, it's 217 U. S., 590, in 1910. There the Wisconsin statute required Jury Commissioners to be freeholders, and this was attacked by persons who had been indicted on the grounds that it violated their rights under due process and equal protection clauses in the freeholder requirement. The Supreme Court thought that the federal question was so clearly insubstantial as to dismiss the case on jurisdictional ground. In summary, I think that the compilers of law in 42 AM. Jur. Public Officers, Section 49, are clearly correct when they say: "Undoubtedly a Legislature has the power to impose a property qualification upon office holders." This is the law to date. Of course, we all know that we are in an area which is moving here, and whether this court is going to take it upon itself to change the law, I can't say.

Judge Bell: Well, there is one thing that would be very pertinent and that is a substantial number of Negro freeholders in this county.

Mr. Evans: Well, sir, also this would get into a standing question in as much as Mr. Turner has stated—

Judge Bell: You could argue that this was reconstruction statutes designed to exclude Negroes from public offices and that was a good way to go about it. Of course, there weren't any freeholders—I don't know if they have argued that. I think probably that might be one of the arguments—but if times have changed, the economics of Taliaferro County has changed over the year where [90] there are a good many Negroes that own property, then it might be a perfectly reasonable thing, at least you couldn't say that it was a scheme and device to keep Negroes out of office.

Mr. Evans: Well, no, sir. In the first place, it applies equally to all people regardless of race.

Judge Bell: I know, but suppose there weren't any Negro freeholders and you had such a law, you know that wouldn't stand up.

Mr. Evans: Your Honor, there is a very easy way of getting around that. You could buy one acre of useless property and subdivide it into one foot square and give one to every person and they all have one square foot of property. That is not really a substantial argument.

Now, as far as vagueness, most words and virtually all sentences and certainly every paragraph of any Code where constitution is vague to some degree. I think the epitome of vagueness is probably in the Fourteenth Amendment where they have such monstrosities as due process and equal protection, whatever that may mean.

Judge Bell: Well, you know what equal protection means but it is hard to know what due process is.

Mr. Evans: Now, as far as—I confining the vagueness here. As far as phrases like good moral character is true,

they are to an extent vague but we hang people because they have "good or bad reputation in the community", and the courts won't even [91] let you give examples. You have to say that he has a good general reputation. We hang people because of that. Now, as far as good moral character, what they are trying to do in all of these qualifications is give the selecting body—we have various levels attacked here—but when it comes to the selection of the school board, they tried to give them a guideline, to try to get the better people in the community, the more intelligent, the best people you can to serve on it. Now, is that really bad? I can't imagine that this court will hold that is bad faith in trying to get the best people possible on the board. This, of course, is one of the questions. I think facial constitutionality of all of these statutes is so obvious there is no substantial question and it should be remanded to a single judge court under both Langsford, and also one the court decided this very past year by the United States Supreme Court in *Moody Vs. Flowers*, where they state the officer sought to be enjoined must be a state officer. A Three Judge Court may not be concerned when the action seeks to enjoin a local officer unless he is functioning pursuant to state wide policy in performing a state function. Here we are talking about the actual grievance, the action complained of. Way back in the thirties in *SOUTHERN Vs the United States*, 316, U. S., 46. They point out that it is not a Three Judge Court situation where the evil complained of is one which could not possibly be said to authorized by a federal statute.

Now, let's look at some of these statutes. In the Jury [92] selection statute there is an affirmative mandate to go out in the community and try and get members of identifiable groups. Now, certainly, if some one is discriminat-

ing against Negroes, that is acting under that statute, under color of it, could not possibly be said to be authorized by it. It is quite to the contrary. It's a flagrant violation of the Georgia law. There is nothing in these statutes that has any built in racial discrimination, and therefore we think under Blanford that the case properly should be remanded to a single judge court.

Judge Bell: Well, now, just putting race aside. If the statutes and the constitutional provision is unconstitutionally vague in the area of setting qualifications for school board members then you would have a Three Judge District Court.

Mr. Evans: No, sir.

Judge Bell: You haven't argued anything but good moral character. There are a few more grounds, a few more qualifications.

Mr. Evans: I believe Your Honor has just made a mistake though.

Judge Bell: All right, where?

Mr. Evans: You stated, as I understand it, if they are vague this is necessarily a ground for saying that it is unconstitutional. Such is not the case.

Judge Bell: I said unconstitutionally vague.

Mr. Evans: But the point here is that if these statutes [93] or these standards can be interpreted more than one way, which they undoubtedly can, any standard can, otherwise you wouldn't have courts, if you couldn't interpret statutes and—

Judge Bell: Now, just address yourself to the qualification that you have to be a supporter of education. Read that out, whatever it is.

Mr. Evans: It states "And be favorable to the common school system." I think perhaps it is a nice idea—

Judge Bell: —Now, what does that mean?

Mr. Evans: It means that the person basically is not opposed to the concept of public education. I think probably it is a desirable thing to have men on the board who are not opposed to public education.

Judge Bell: It doesn't say "not opposed to it." It says "to be favorable to it."

Mr. Evans: Well, you are taking one side of the coin. I think it is the same thing.

Judge Bell: Well, I am taking the language in the statute.

Mr. Evans: Yes, sir.

Judge Bell: It says to be favorable to it.

Mr. Evans: Right.

Judge Bell: Now, let's take this school board. We have got five people on the school board and none of them have children of school age. Don't you think that would militate against the idea that they were favorable to public education?

[94] Mr. Evans: No, sir, I think, with all due respect—

Judge Bell: —You have got one who has never had any children.

Mr. Evans: With all due respect to Your Honor, I think the argument is non-secretive. I think it is quite possible for a person who favored the concept of public education to want to have a good public school system and yet, for various reasons, because his child is exceptional, because of various reasons wants his own child to go to a private school. I can see this very well. I could, myself, favor public education, if I had the money I might say that in spite of it I want to do the best job I can to operate schools, well, in my case, Fulton County, that I might prefer to send my child to a private school. The two are not inconsistent,

therefore I submit that Your Honor's argument is non-secretive on that point.

Judge Bell: —Well, I don't know what my argument is. I am trying to find out what that means. That is all I am interested in. You see, I am not here to argue with you. I want you to tell the Court just what this means. If you were on the Grand Jury and you came to select a school board member and you took the constitution and you said "Now, what are the qualifications"? And this is one of them.

Mr. Evans: Right.

Judge Bell: What would that mean to you? How would you go about performing your duty as a Grand Juror?

[95] Mr. Evans: Well, first of all, I would want to know—and I did give Your Honor one side of the coin; that he is not opposed to the concept of public education and that he is not neutral to it, that he favors it. Now, to me this is as clear as anything can be. I don't see anything vague about that.

Judge Bell: Does it say public education?

Mr. Evans: Yes, sir. It says favorable to the common school system which has judicially been interpreted by the Courts of Georgia over and over as meaning the public schools.

Judge Bell: Do you think that is now freighted with the idea of a segregated common school system?

Mr. Evans: Your Honor, certainly not.

Judge Bell: You don't think so?

Mr. Evans: No, sir.

Judge Bell: You don't think it could mean that a member of the board of education had to be favorable to a de-segregated common school system?

Mr. Evans: Yes, sir. I think it means that he is favorable to the public school system within the limits of the law. I don't imagine the Grand Jury goes and interviews them about the import of Brown and all the technicalities of the law.

Judge Bell: They have got to be favorable to everything that's in the law.

Mr. Evans: Yes, sir. And the Courts are here to prevent [96] him from doing something not within the law. That is a wholly different subject matter. That's application. That has nothing to do with the facial validity of the statute. I say that the standard is reasonably clear.

Judge Bell: Well, that's the whole thing. Is it clear? What does that mean to a Grand Juror when he comes to perform his duty? Does the Grand Juror get out of that; that they ought to appoint somebody who is favorable to common schools, common schools meaning desegregated common schools?

Mr. Evans: I would say, basically, and I am trying to put myself in the position of a Grand Juror, I would look at "Does he favor providing free education." That is what I would say.

Judge Bell: All right. What's the other qualification?

Mr. Evans: The other qualification was a fair knowledge of the elementary branches of the English education.

Judge Bell: What do you think that means? Put yourself in a Grand Juror's seat—

Mr. Evans: —I will be glad to.

Judge Bell: All right.

Mr. Evans: I think that this—of course, I would first of all look at it historically, our basic, the substance of education we have, not procedural, it comes from England; we teach English History, we teach American History, we

teach English, we teach math, and I would say that basically you would want some one who was not a complete clod on the board, you would want some [97] one who at least has a semblance of the English education.

Judge Bell: Have you examined the qualifications of these school board members?

Mr. Evans: No, sir, I have not. I am not on the Taliaferro County Grand Jury.

Judge Bell: Do you think they have learning in the elementary branches of the English education?

Mr. Evans: No, sir. I am not on the Taliaferro County Grand Jury, so it is not my prerogative.

Judge Bell: Do you think that a Grand Juror would know just what this means, so we could select a man?

Mr. Evans: Yes, sir, I think he would take that to mean that the person is reasonably intelligent and has at least some education.

Judge Bell: It doesn't say that.

Mr. Evans: I think that is what you would take it to mean.

Judge Bell: Well, maybe he might take it to mean the wrong thing. It doesn't say that.

Mr. Evans: Well, Your Honor—

Judge Bell: —Read it out again.

Mr. Evans: "A fair knowledge of the elementary branches of an English Education."

Judge Bell: I really don't know what it would mean, but I thought maybe you did.

[98] Mr. Evans: Well, Your Honor, of course, the answer to that—

Judge Bell: —You are sort of an expert in this area of the law.

Mr. Evans: I would like to go one step further. All of this, even though it is acceptable of many interpretations it is not a constitutional definitive under *Screws vs. United States*, 325 U. S. 91. Here the Court said: "The statute—" No, it pointed out that it is the duty of a court, where the statute is vague and ambiguous, to supply the standard. It is only where the statute is incapable of interpretation and—

Judge Bell: —Wait a minute. What is that decision?

Mr. Evans: *Screws vs. United States*, 325 U. S. 91. Where they said a statute will be held null and void for lack of sufficient clarity to meet due process requirements "only where no possible construction can be made by the Court to save it."—

Judge Bell: —You say 323?

Mr. Evans: 325 U. S. 91, and particularly page 100.

Judge Scarlett: That last paragraph you stated, read that again, that last paragraph you just stated. Only—what?

Mr. Evans: "Only where no possible construction can be made by the Court to save it." Therefore, I would suggest that if the Court feels this language is a little bit vague it should, in its decision, say that "we interpret this as meaning", and [99] therefore say that as far as being constitutional—of course, this is a basic rule, the Court does not set out to destroy statutes by declaring them unconstitutional. It is our place to preserve their constitutionality—

Judge Bell: —All right, now, we are at the cross roads. Suppose we construe that statute and we find that some of these people don't meet the qualification on the school board.

Mr. Evans: The proper remedy there would be quo warranto proceedings, I presume, in the state courts.

Judge Bell: You think we ought to relegate these people to that, if we should find that some of them don't meet the standards.

Mr. Evans: I think it is proper. If there is a person unqualified serving on any board in the State of Georgia—I have no particularized information as to this school board—I presume that all members meet their qualifications. I believe there is a presumption to that effect. However, in any school board in the state, if a member lacks qualification because of age, citizenship or being a registered voter the proper procedure is to file quo warranto proceedings in the state courts. I think the federal courts would normally tend to grant the state courts the first whack at it.

Judge Bell: Well, if this is a serious question, if it is debatable, arguable question, then they are entitled to have a Three Judge District Court.

[100] Mr. Evans: No, sir. This is only a faulty application by local officials, if this was so, and I say "if".

Judge Bell: No, if the statute is vague to this extent. We can't rule if it is not vague—

Mr. Evans: —I think that—

Judge Bell: —And in the same breath say that it is so frivolous that they are not entitled to a Three Judge Court here.

Mr. Evans: No, sir, but I think the proper ruling is that the vagueness question is so frivolous that it is not a Three Judge Court matter. I mean it is not that vague. I mean it sets a general standard, a flexible standard. What it is trying to do, in essence, is to get people who have some education, get people who have a good reputation and—

Judge Bell: Suppose you file a brief and tell the Court what you think these qualifications mean that seem so plain to you, that a man is learned in the elementary branches of the English Language. You tell us what that means, and then you also tell us what you think it means to be favorable to the common school system, whether or not that means favorable to a desegregated school system, or a common school system in the days—or the way it was in the days when that was passed.

Mr. Evans: All right, sir.

Judge Scarlett: That last paragraph covers, I think—

Mr. Evans: Well, if it wasn't it would be up to the [101] court to fill in the meaning.

Judge Bell: Well, I think you ought to file a brief.

Mr. Evans: Well, it will be about a two page brief, because as I tried to explained—

Judge Scarlett: —That's the kind we like.

Mr. Evans: Well, it will be about that, because to me it means favorable to the common school system, it means one favors a system of public education being available for all citizens of the county. I don't think it really gets into the question of whether it favors a segregated system or not, but I think it is quite possible that a man could favor a segregated system and be on the school board.

Judge Bell: How in the world could he be? He would close the schools.

Mr. Evans: No, sir, not at all, because you are saying, frankly—

Judge Bell: Well, I tell you, you file a brief and give us your views about it, because you are getting so mixed up.

Mr. Evans: No, sir, I am not mixed up.

Judge Bell: Well, if you favor the common schools in 1968, that means that you would have to favor a desegre-

gated school system, or an integrated school system. If you don't favor that, then you can't be on the school board.

Mr. Evans: No, sir. It doesn't mean you favor, it means that you are willing to accept it in accordance with the laws.

[102] Judge Bell: I am just telling you what the constitution of Georgia says. I didn't write the constitution. I am just telling you what it says. You will have to live with that. It is not up to us to worry about. You file whatever brief you want to file on this.

Mr. Bloch: Your Honor, right on that point, perhaps those qualifications which were set out in the Code section, which was originally passed in 1919, apparently, at the time when the constitution of 1877 was in force. The constitution of 1877, prior to the amendment of 1912, provided this:

"There shall be a fair system of common schools for the education of children in the elementary branches of an English Education only as nearly uniform as practical. The expenses of which shall be provided for by taxation or otherwise."

Now, by an amendment ratified October 2nd, 1912, the words "In the elementary branches of an English Education only", were stricken, so the section prior to the adoption of the constitution of 1945 and at the time of the passage of the Act of 1912 embodied, most of which, is embodied in this Code Section, the constitutional provision headed "Common Schools", read: "There shall be a thorough system of common schools for the education of children as nearly uniform as practical. The expenses of which shall be provided for by taxation or otherwise."

Now, it seems to me—

Judge Bell: They just didn't change that section of [103] the constitution and that statute about the elementary branches.

Mr. Bloch: That's right.

Judge Bell: When they changed it in—

Mr. Bloch: They changed it in another. It seems to me that phrase "favorable to a system of education" should be read in the light of the constitutional provision.

Judge Bell: Well, it would be a simple matter, it seems to me, to go to the library and find some writing on education at that time which would define what they mean by an elementary system of English Education.

Mr. Bloch: I think they were getting rid of the old theory of reading, writing and arithmetic.

Judge Bell: Right. Mr. Evans can find that over there in the State Library. I think he can get that up for us, and tell us about that in his brief.

Now, suppose we let Mr. Moore put his evidence on now.

Mr. Bloch: Your Honor, can I be heard from right there?

Judge Bell: All right.

Mr. Bloch: I have been bothered about it ever since Your Honor posed the question you did, or rather I posed the question and Your Honor said you were going to take that up after recess. I preface what I have to say by saying that Your Honor knows and the other Members of the panel know that I want to convenience the Court just as much as I possibly can.

Judge Bell: We know that you have not filed an answer.

[104] Mr. Bloch: We have not filed an answer.

Judge Bell: All right.

Mr. Bloch: Here is the situation: I think this suit was filed and was served on us on the 27th of November. We were engaged a few days afterwards and I had to hurry in order to get up what pleadings I did get up and I thought that I could and did conscientiously file the motions that were filed which I supported with a brief. Now, we came

over here this morning, having filed that brief some days ago and served it some days ago, without having heard a word from opposing counsel in response to it, and we came here without knowing just what we were going to do. We came here because the case was set for the 23rd—

Judge Bell: —And you have not yet had a chance to read what he filed?

Mr. Bloch: Have not yet read what he has filed, haven't had a chance to read what he has filed, and if you will bear with me about five minutes, let me show you how important it is to proceed in a little different sort of way. Now, our motion under 12(e).

“Comes now the defendants and show the Court and moves the Court for a more definite statement. The defects complained of and the details desired are: (1) In paragraph 3 of the complaint it is alleged that certain of the defendants are Members of the Grand and Traverse Juries of Taliaferro County, Georgia. With respect to this allegation defendants desire that plaintiffs [105] allege when and at what terms of court W. W. Fouche, Rastus Durham and Elmo Bacon were Members of the Grand and Traverse Juries of Taliaferro County.”

I don't attach much importance to that because I could go find out.

Judge Bell: All right.

Mr. Bloch: Second, in paragraph 4 of the complaint it is alleged that certain of the defendants are Members of the Board of Education of Taliaferro County, Georgia, chosen for the positions by the Grand Jury. Now, with respect to this allegation I can lay that to one side because I can go find out.

Now, listen to this one, though. In Paragraph 11 of the complaint it is alleged that the defendants have chosen

and threaten to continue to choose an all-white school board to superintend the all-black public schools of Taliaferro County.

With respect to this allegation defendants desire that plaintiffs allege which of the defendants made the alleged threats, to whom, when and where. Now, I think that is important for us to know that.

Judge Bell: It wouldn't be important at all if they don't prove that. It would fail for want of proof.

Mr. Bloch: Except for one thing, Your Honor—

Judge Bell: —You don't want to prove a negative, do you?

Mr. Bloch: I am going into these damages.

[106] Judge Bell: All right.

Mr. Bloch: And 4, Your Honor might make the same response here:

“That the policy, custom, practice, and usage of the defendant school board has been such as to deprive the plaintiffs and members of their class of textbooks, facilities, laboratories, recreation facilities, teaching programs”, and so forth.

With respect to this allegation defendants desires that the plaintiffs allege which of the defendants so deprived the plaintiffs, as alleged, when such deprivation occurred or what the deprivation consisted and how and in what manner it was consummated.

Now, I respectfully suggest, Your Honor, that Your Honor's suggestion to the preceding one doesn't exactly solve the problem and certainly it wouldn't this, because when they set it up we have got to know who to bring to court to disprove it.

Judge Bell: Well, if they agree that today is a final hearing, and we don't plan to ask them that until they finish putting their evidence on, that's reason I told you earlier that later in the day we will decide what to do with the case. It may be that we will continue it, or it may be that we will strike the damages. We just don't know that now until they get through putting their evidence on.

Mr. Bloch: Well, why couldn't that problem be solved [107] just as well by confining this hearing on a motion for a preliminary injunction?

The Court: Well, because it saves valuable judicial time if we can get the whole case in today. I know you are not interested in that but we are.

Mr. Bloch: Yes, I am too.

Judge Bell: We have got so many cases we just can't spend all of our time working on the Taliaferro County case.

Mr. Bloch: I am interested in that. Of course, I am interested in the Court's time.

Judge Bell: I have seen a lot of these Civil Rights cases. I have been in a lot of them in several states and I find that usually by the end of the day everybody has got everything in the record that they want to get in and everybody will say "Well, let's just have a ruling now and treat it as a final hearing." I can understand, if somebody was trying to get Five Hundred Thousand Dollars damages from me I would be worried.

Mr. Bloch: And not only that, Your Honor, I think this is such a case of great importance, a case of great importance, that we ought to proceed right down the line according to the rules, and I mean by that—

Judge Morgan: What did you file, a motion for a more definite statement?

Mr. Bloch: All the motions, and then we will save time and proceed according to the rules of law if Your Honors [108] would see fit—

Judge Bell: Well I tell you, Mr. Bloch, we would be here about a week if we proceeded in a normal manner, and there is just no sense in spending a week on this case. Now, from just reading these things, that's what we have done this morning, and we know just about what this case is about. Now, we have got to devise a procedure that won't take a week.

Mr. Bloch: I understand, and I am going to help you do it.

Judge Bell: You let the plaintiffs put their evidence on and they will probably complete their record and at that time we will make a decision as to whether or not—you may not even want to put anything on, but we will wait and see about that, so you just let us go ahead like this for a little while and then we will hear from you again. We don't mean to cut you off, but we are not going to hear this case today as a motion for a preliminary injunction and come over here a month from now and hear some other part of it.

Mr. Bloch: I wasn't going to suggest that. I was going to suggest—I heard you set a case down in Brunswick for the 23rd and I was going to suggest that after Your Honors have ruled on the various motions and then if it became necessary for us to file an answer that we file it and embody in the answer just what has been uncovered here before the Court this morning and if there is any further hearing necessary that we have it [109] at the same time down there in Brunswick.

Judge Bell: Well, we may do that, but we don't know that now.

Mr. Bloch: I am frank with the Court, and the thing that I am particularly bothered about is the attitude about these damages. I had a chance during the ten minutes recess to glance at that brief and I see where they are contending that Your Honors have the right, sitting as a Court of equity, to award ancillary damages. Now, I haven't had a chance to read all those cases that they cite. I don't know what they hold.

Judge Bell: Well, we are not going to award any damages today, if that will make you feel any better.

Mr. Bloch: Well, I hope you never award them, but I just think the case ought to proceed after you have ruled, whether or not—

Judge Bell: —If we were living in a time when we didn't have many cases I would agree with you and I would enjoy staying over here in Augusta and I know that Judge Scarlett and Judge Morgan would, but we have got something to do tomorrow and the next day, and we have just got to make as much progress as we can everyday, so today we are going to hear this evidence and at that point we will hear from you again and we will decide what we ought to do about it. We don't want to take advantage of you in any way, and I don't think we are.

Mr. Bloch: Just so it is without any detriment to any [110] of our pleading rights.

Judge Bell: That's the way we are proceeding. We don't intend to deny anyone procedural due process.

Judge Morgan: Did you take any discovery after you were served on the 27th of November.

Mr. Bloch: Sir?

Judge Morgan: Did you utilize any discovery rules after you were served on November 27th?

Mr. Bloch: I can't hear you, Your Honor.

Judge Morgan: Did you utilize any of the federal discovery rules after you were served on the 27th of November?

Mr. Bloch: No, sir. What happened then, you see, we had the fundamental proposition that it was not a case for a Three Judge Court, nor a class action. Before we could talk about discovery rules they filed some interrogatories and requests for admissions which covered almost everything that we would have put into our answer. We did not utilize any discovery rules, take the deposition of Calvin Turner.

Judge Bell: All right, Mr. Moore, lets put your evidence on.

[112] CALVIN TURNER, sworn for the plaintiffs, testified.

On Direct Examination by Mr. Moore:

Q. Mr. Turner, you have been sworn? A. Yes, sir. I have.

Q. Will you state your name, please? A. My name is Calvin G. Turner.

Q. Are you a resident of Taliaferro County, Georgia? A. I am.

Q. How long have you been a resident of Taliaferro County? A. All of my life.

Q. And how long has that been? A. 35 years.

Q. Is your father a resident of Taliaferro County? A. He is.

Q. And how long has he been a resident there? A. Oh, I think for about 52 years.

Q. And your grandfather? A. For 85 or 6 years.

Q. And that is Mr. Joe Morris Turner? A. My grandfather is Mr. Joseph Turner.

Q. And he has always lived in Taliaferro County? [113] A. He has.

Q. And is he alive today? A. He is in this courtroom.

Q. Are you a member of the Negro race? A. I am.

Q. And you are the plaintiff in this case? A. I am.

Q. Do you hold any office in Taliaferro County, any unincorporated association? I will ask you this, are you connected with the Taliaferro County Voting League? A. I am.

Q. And what is that connection? A. I am the Consultant for the Taliaferro County Voters' League.

Q. And how long have you been the Consultant for the Voters' League? A. For about three years.

Q. Prior to becoming Consultant for the Taliaferro County Voters League, were you connected with the Taliaferro County School System? A. I was. I was once a teacher in the Taliaferro County School System.

Q. And how long were you a teacher? A. Two school years.

Q. And you have lived all of your life in Taliaferro [114] County? A. I have.

Q. Are you familiar with the Negro citizens of Taliaferro County? A. I am.

Q. Have you conducted surveys and other things to determine the number of Negro registered voters in Taliaferro County? A. We have.

Q. Are you familiar with the white people in Taliaferro County? A. I am.

Q. I hand you Plaintiff's Exhibit P-1, which is a list of the Grand Jurors for Taliaferro County for 1967 and ask you to state whether or not you have seen that list before? A. I have seen it before.

Q. And where did you see it? A. I saw this list first in the Advocate Democratic, a Local County Newspaper.

Judge Bell: Is that a list of the Grand Jurors, or all Jurors?

Q. Is that a list of the Grand Jurors? A. Grand Jurors.

Q. And also a list of the Traverse Jurors for the year 1967?

[115] Judge Bell: Well, now, just on the matter of procedure, I want to see if our understanding of the Georgia Law is correct on preparing a Jury list. You prepare a Master List, as I understand it, and then you take two thirds of the names on that list and make a Grand Jury list.

Mr. Owens: Two fifths.

Judge Bell: Two fifths, and leave Three Fifths on the Traverse Jury list?

Mr. Owens: It would be three fifths traverse—on the Traverse Jury List that are not also on the Grand Jury list. There is an overlap there, Your Honor.

Judge Bell: I see. Now, you have got the two lists separated here. This is a separation of the overall Master List.

Mr. Owens: May it please the Court, to clarify the situation these are lists that were furnished by the defendants as being certified copies of the present list of Traverse Jurors as certified by the Clerk of the Superior Court.

Judge Bell: Let Mr. Moore see it.

Mr. Owens: I gave him copies.

Judge Bell: All right.

Mr. Owens: And likewise a copy of the Grand Jurors. We have furnished these to him.

Judge Bell: All right. Give those to the Clerk.

Mr. Owens: They may be given to the Clerk and so identified.

Judge Bell: Mark those and put those in evidence.

[116] Mr. Moore: This is a copy, Your Honor. There are two documents, Plaintiffs' Exhibit 1, and the first two sheets being the Grand Jurors for 1967, and the second three sheets being the names or a list of the Traverse Jurors.

Judge Bell: All right, let's mark that Plaintiffs' Exhibit No. 1.

Mr. Moore: Number 1, yes, sir.

Judge Bell: Now, is that the same list that Mr. Turner has over here in front of him?

Mr. Moore: Yes, sir, it's a photo-copy.

Judge Bell: That's the one he is going to testify concerning it?

Mr. Moore: Yes, sir.

Judge Scarlett: Aren't you going to file them?

Judge Bell: That will be admitted into evidence.

Mr. Moore: I want to substitute this for—

By Mr. Moore:

Q. Mr. Turner, I believe that the document that I am handing you now, Plaintiff's Exhibit No. 1, is the document that you saw rather than this photo-copy, is that right? A. From just looking at them, they look generally the same. I haven't had time to see them.

Q. Did you do anything to the list? A. This list—

Mr. Owens: —May it please the Court: May we inquire as to what the relevancy is of a list that he was shown that was [117] in the paper and prepared the list before the Court?

Judge Bell: Well, let Mr. Turner answer that question first.

Q. Mr. Turner, did you do anything to the list? A. No, sir.

Judge Bell: No, he didn't ask that. He wants to know—you started off examining him about a list that he saw in the Advocate Democrat, I believe he called it.

Q. The list that you have there, Plaintiff's Exhibit P-1, have you seen it before? A. I have.

Q. Where?

Judge Bell: Where did you see it?

The Witness: I saw it—I have seen this list twice. Generally looking at it I think I saw it in the Advocate Democrat. I am sure that I saw this in Attorney Moore's office.

Judge Bell: All right. That was after you had filed it, Mr. Owens, no doubt?

Mr. Owens: Yes, sir.

Judge Bell: Now, before you ask him anything else, can we stipulate that this is the current Grand Jury and Traverse Jury List?

Mr. Owens: Yes, sir.

Judge Bell: In Taliaferro County?

Mr. Owens: Yes, sir.

[118] Judge Bell: And when was this list drawn or made? Does it tell that on the top of it? Lets see. In accordance with an order passed by Judge Stephens on the 3rd of April, 1967. All right. Now, you go ahead.

Q. Looking at Plaintiff's Exhibit No. 1, did you do anything to that list? A. I went through this list and pointed out all the Negro names that are listed.

Q. And did you put any mark on the list to indicate the names of Negroes? A. I checked every Negro name that on the Grand Jury and the Traverse Jury list that I knew of.

Q. Did you put a check mark by their names? A. I put a check mark by their names.

Q. How many persons did you find on the Grand Jury list who members of the Negro race? A. Looking here from what I have checked, I found eleven, I believe.

Q. The total of the Grand Jury is 130, is that correct?

Judge Bell: Is that correct, Mr. Owens?

Mr. Owens: I am not sure.

Judge Bell: All right.

Q. Now, I ask you to direct your attention to the Traverse Jury list, which is also a part of Plaintiff's Exhibit 1. [119] Did you check that list? A. I did.

Q. Did you put a mark on there to indicate the names of Negroes? A. I did.

Q. Did you know how many Negro persons you checked off as being members of the Negro race? A. If my calculation is right it was 56.

Q. 56 names? A. Right.

Judge Bell: How many total on the list?

Mr. Moore: 328, Your Honor.

Q. Did you make an examination of the Grand Jury list for 1967 to determine the number of women whose names are on there? A. We did.

Q. How many women are on the Grand Jury list? A. There is none on the Grand Jury list.

Q. All right, did you make an examination of the names on the Traverse Jury list to determine the number of women? A. I did.

Q. How many women did you find on the Traverse Jury list? A. I would have to examine my checks again.

Q. Would you do that, please? [120] A. My count is nine, nine women.

Q. Nine women? A. Yes.

Q. Does that include both the members of the Negro and the White race who are females? A. Only the Negro race.

Q. All right.

Judge Bell: How about whites?

Q. Could you look for the number of white ladies? A. It will take me a little longer in that I haven't checked them already but I could go right through it and do it.

Judge Bell: Well, I don't believe we will take time for that.

The Witness: Judge, if Your Honor please, there is one thing that might help me do it much faster is that all the white women are "Mrs." and "Miss", and that would be one way to identify them.

Mr. Owens: That is a conclusion, Your Honor. I know there are one or two that are Negroes.

Judge Bell: Look at the nine Negro women there, Mr. Turner, and see if they put "Mrs." or "Miss" by any name. Just look at your nine?

The Witness: Well, I have got to go through it like I did before.

Judge Bell: All right.

[121] The Witness: Judge, I can identify one Negro woman on this list as "Mrs."

Q. Who is that? A. Mrs. Doris Tellington.

Q. And the rest of the names that appear on that list as "Mrs." and "Miss", in your opinion, based upon your experience in Taliaferro County are white ladies? A. Right, sir.

Judge Bell: Do you plan to call any Jury Commissioners to testify? I want to find out, but not about this particular point, though this is a mighty small thing to do and to be put before a court for any county or for any public official to make such a distinction between people. They have got mighty little to do, whoever is responsible for it. It looks

like there are so many greater things on earth that ought to be attended to than to be wasting time like that. Either don't put "Mrs." or "Miss" before white people or put them before the Negro people too. That's an awful small thing.

Now, what I would like to know about is how you draw these Grand Jurors names out of the main list for service on the Grand Jury. Do you do that by lot, chance, or do the Jury Commissioners decide which of the Traverse Jurors will have a chance to serve as Grand Jurors? That's the big question. Either Mr. Owens you can put some evidence on, if you are prepared to do that today, that might be better than having Mr. Moore call somebody. I think we can get at it easier that way. All we want are the [122] facts. We don't care about any strategy or anything, so it maybe, Mr. Owens, if you don't want to do that, we can get Mr. Moore to call a witness or something. That is going to have to be developed. There is a certain disparity between the number of Negroes on the Grand Jury as compared to the number on the Traverse Jury.

Mr. Owens: May it please the Court, some of the Jury Commissioners are present and are available at the proper time.

Judge Bell: All right.

Judge Morgan: In other words, how were these eleven taken from the 328.

Judge Bell: All right, now what else?

Q. Now, Mr. Turner, I want to ask you about complaints of Taliaferro County parents to the school board. Do you have any knowledge of parents attempting to complain to the school board? A. I do.

Q. Now, can you tell the court what efforts the parents of Taliaferro County made to complain to the school board, what their complaints were, and when did they make overtures to the school board to present their grievances?

Mr. Owens: May it please the Court, we object to the way the question is worded on the ground that it is hearsay. He can ask what complaints he made or were made in his presence.

Judge Bell: That's right, he can testify as to complaints of his own knowledge. He can't tell about what he has heard, what some one else reported to him. Mr. Turner you tell [123] us of any complaints that you heard that were made in your presence.

Mr. Turner: May I ask, Judge, how far would I need to go back, and where should I start?

Judge Bell: I would say within the last two years.

Q. Start after we got the injunction in 1967.

Judge Bell: That's right, the last court suit.

Q. The school year of 1966-1967-68.

Judge Bell: When we wound this case up before over here, after spending all the time we did on this case before, we thought you were going to have peace in Taliaferro County and we would never hear of it again. I, actually, myself thought that there would be one or two Negroes put on the school board. It never occurred to me that you would run a black school system with a white school board. That's something the people have been complaining about all over the world for the last twenty years. It has

caused trouble everywhere. At any rate, we have another suit, so go ahead.

The Witness: If it pleases the Court, in an attempt, I believe it was in '65, that the Voters League of which I am a member had appointed committees to make attempt to meet with the school board to discuss grievances and we were never successful until maybe—

[124] Mr. Owens: We don't want to cut the witness off, but we suggest that he is not responding to the question. He is giving a dissertation on the Voters League and not enumerating a complaint.

Mr. Moore: Well, Your Honor—

Judge Bell: Just a minute, Mr. Moore. What he said is that he has never been given an audience where he could complain. That is what he has said so far, that the public officials of Taliaferro County haven't given him an audience so he could complain. I don't know what else he is going to say, but at least he has said that much. All right, Mr. Turner.

The Witness: And we had a problem really in trying to find out when, where and what time the board met, and we were able to find out a meeting date and hour in October, if I am correct it was in October of 1966, in which we went in, a committee went in to meet with the Board of Education and I think that committee consisted of some five or seven people.

Judge Bell: Were you present?

The Witness: I was not present on the scene.

Judge Bell: Well, wait a minute then. You can't tell about what happened if you were not there.

The Witness: All right, sir.

Q. Tell us about the time you went to the board yourself with persons trying to complain? A. I could never get into the Superintendent's office or to the Board of Education because we never knew when [125] they met.

Judge Bell: Did you ever try to get into the Superintendent's office?

The Witness: We did.

Judge Bell: I mean you personally?

The Witness: I did.

Judge Bell: In 1965?

The Witness: Yes, sir.

Judge Bell: How about since the court order?

The Witness: Not since the court order.

Judge Bell: All right.

The Witness: But I can say that it's a fact that I did write a letter to the Chairman of the Board of Education of Taliaferro County.

Judge Bell: Who was that?

The Witness: Mr. Horace Williams at that time.

Judge Bell: Who had his children in another school?

The Witness: Right.

Judge Bell: All right.

The Witness: I sent the letter by registered mail asking him to advise us as to a date and time of the Board of Education meeting.

Judge Bell: When did you write that letter?

The Witness: That letter was written after the October meeting because the members went and some few went in and they [126] were supposed to hear the grievances of the Committee and comply back to the committee—well, to the committee, well, this

never happened and after some two or three months we wrote back to the Board.

Judge Bell: What was the purpose of you writing the letter?

The Witness: Because I was a part of it.

Judge Bell: Well, the exception to the hearsay rule is to explain conduct. Why did you write the letter? Did somebody tell you they didn't get a hearing or something like that?

The Witness: First of all, I was a part of the committee.

Judge Bell: All right.

The Witness: That was appointed by the Voters League, and on the night that the committee went to see the Board of Education I was not available.

Judge Bell: All right, but you wrote a letter later on asking for a hearing?

The Witness: Right.

Judge Bell: What happened? Did you get any response?

The Witness: We got no response and I later called Mr. Williams over the 'phone, after he didn't respond to the letter, and he says to me at that point: "We have had our board meeting and I don't have nothing to tell you."

Judge Bell: All right, have you made any further attempt to have any communication?

[127] Mr. Moore: Was that October?

Judge Bell: No, he said that later, after the fall of 1966.

The Witness: That could have been in February.

Judge Bell: February of 1966?

The Witness: February or March, no later than March.

Judge Bell: Well, what were your grievances you were asserting?

The Witness: One of the main grievances was that there was no communication at all between the Board of Education, teachers and parents, and we felt, as Negro parents, that we couldn't do the best for our children when the parents could never set down and talk with the Superintendent nor the Board of Education and there was evidence of parents going to the school and being treated coldly.

Judge Bell: This was your grievance?

The Witness: Right.

Judge Bell: You wanted to meet with the Board of Education and discuss neutral problems. What would you have done when you got there if they had given you an audience?

The Witness: We would have discussed the problems that affected the Negro school.

Judge Bell: All right.

Q. What were your problems? What are those problems?

Judge Bell: Well, he just told us that. Is there any [128] more problems you want to tell about?

The Witness: We thought maybe that if the board gave us an audience, that if they were made aware of the problems that existed we could offer suggestions as to how we would remedy them. There were other problems that we were going to talk about but we thought the communication was the main one.

Judge Bell: All right, now, have you tried to obtain an audience with the school board since February, 1967?

The Witness: We have not. We haven't done it this year, this school year. We have not tried to.

Judge Bell: Not Mr. Williams told them there wouldn't any more to be said.

The Witness: Right.

Judge Bell: All right.

Q. Did you know that there were vacancies on the school board in 1967? A. I am not aware of it. I haven't been aware of it until it was mentioned in the court.

Q. There were vacancies in 1967? A. Right.

Q. Do you have any personal knowledge of the white children being able to leave the county and go over to adjoining counties to attend school? A. The question is do I have any knowledge?

Judge Bell: Personal knowledge?

[129] The Witness: I don't have personal knowledge. I haven't seen with my eyes.

Judge Bell: You can't tell what you heard. Mr. Moore, that would be very simple if you can show that somebody is living in Taliaferro County and sending children into adjoining counties. They will soon have some friends over there going to school in that county. That is what we have already ruled on one time. Everybody is under a court order and we will open up the doors if you can prove that, but just don't go out on a side issue.

Q. Mr. Turner, did the Taliaferro County Voters League make a survey of the Negro registered voters in the county?

A. It did.

Q. When did it make that survey? A. They made that survey prior to the last general election.

Q. And when was the last general election? A. The last general election was in 1967.

Q. And what did you do in making a survey? A. We got volunteers. There were people who volunteered to go from house to house and to survey every Negro home in Taliaferro County.

Judge Bell: What relevancy is that?

Mr. Moore: To try to establish the actual number of Negro voters in the county, Your Honor.

Judge Bell: Well, nobody is disputing it. But you have [130] got to prove it. We didn't stipulate that, did we?

Mr. Owens: No, sir, we didn't, Your Honor.

Judge Bell: Well, wouldn't Secretary Fortson's office show these figures.

Mr. Moore: They show the figures but I didn't know whether or not the defendants accepted the figures, so I wanted to prove it.

Judge Bell: Well, the Court can take judicial knowledge—well, I see, we don't know which is Negro and which is White.

Q. You did make a survey by going from house to house? A. We did.

Q. Did you record or write down the results of the survey? A. We did.

Q. Do you have any record or records that you kept as a result of this survey? A. We do.

Q. Did you bring those records into court with you? A. We did.

Q. Are those records contained in the file box that I have here? A. They are.

Q. Will you tell the court what is in the boxes? A. There is a card of every Negro registered voter [131] in Taliaferro County that is eligible to vote. Those cards are filed in alphabetical order. There are 949 Negroes in Taliaferro County eligible to vote.

Judge Bell: 949?

The Witness: 949. And if it pleases the Court—

Judge Bell: —Wait a minute. How many voted in the last election, just out of curiosity?

The Witness: As far as I was able to determine there was about 100 Negroes who did not vote.

Judge Bell: All right.

Mr. Owens: Certainly the figures on voting are relevant, but we don't think the court should accept any figures made by a survey which this witness just has hearsay knowledge.

Judge Bell: I don't know why you want to object. It helps you. In the complaint there were eleven hundred and some odd Negro voters registered, and now they have got it down to 949. It looks to me like you would be glad to have that help.

Mr. Owens: We are just objecting to the method counsel is using to prove his whole case.

Judge Morgan: Let me ask this; Did you compare that with the voters registered? You had a voters list, didn't you?

The Witness: We had a voters' list.

Judge Morgan: You ran that against the voters' list, checked that against the voters list?

The Witness: We did the best we could, but that was [132] not an adequate way to come up with an adequate figure.

Judge Bell: Because a lot of those folks had left the county?

The Witness: Well, I see some people on the voting list in my family who have been dead and buried for ten years.

Judge Bell: All right.

Judge Morgan: The list hadn't been purged in that length of time?

The Witness: It hadn't been purged.

Judge Scarlett: Although, that might have helped our good friend over here, I think that is purely hearsay, as some of them are dead and moved from place to place and then what information he had was not what he knew himself. It was some survey that was made, which is usually done in political campaigns. The question is how many voters have you got. They try to find that out in every political campaign.

Mr. Moore: Your Honor, we don't want to introduce all of these records.

Judge Bell: We don't want any card system in here.

Mr. Moore: But the records could come in as the business records of the unincorporated association.

Mr. Owens: We don't agree to that, Your Honor. These are business records.

Judge Bell: Well, I tell you what we will do, we will take this evidence in for whatever weight the court wants to give it. I don't know whether it is hearsay or not. My own idea would [133] be that it would be like an accountant testifying. He has handed you the record and if you want to look at them we will take a recess, but Judge Scarlett has got one view and I have got one and Judge Morgan has got one and we won't break the case down over this.

Mr. Owens: We don't either, Your Honor.

Judge Bell: All right.

Q. Mr. Turner, can you reconcile the difference between the number of registered voters, Negro registered voters that you testified to in court and the number alleged in the complaint?

Mr. Owens: May it please the Court, we object to that, that is a conclusion.

Judge Bell: He has already said what the difference is, Mr. Moore. He said that members of his own family had been dead and yet were still on the voters list. The court can draw an inference as to what the difference is. We won't get into that.

Q. Do you have any knowledge of any white persons who are not qualified by death and non-residency whose names appear on the voters list? A. We know and we do have a list. We were here in '65, I believe, and the children, the white children that left the county, their parents moved and established residence in other counties and we found—

[134] Judge Bell: —They are still voting in your county?

The Witness: They are still voting in the county.

Judge Bell: All right.

The Witness: And which they are still on the voters' list as residents in other counties.

Judge Bell: All right, that's enough.

Q. Are some of them on the Jury list, the Traverse and Grand Jury list?

Judge Bell: What difference does that make? They can't serve. If they don't live in the county they can't come back over there and be on the jury.

Mr. Moore: I know, Your Honor, but they—

Judge Scarlett: —They sure can't serve if they are dead.

Judge Bell: Well, if they have moved out of the county—I imagine there is a plenty of people in every county on the Jury list that don't live in the county any more. In this country where we have freedom of movement you don't have to go check in with some official to get permission to move.

Mr. Moore: No, sir.

Judge Bell: If you don't have to do that the officials don't know you have moved.

Mr. Moore: But you have to stop exercising the privilege when you are disqualified.

Judge Bell: Well, do you have any evidence of anybody [135] living in another county serving on the Grand Jury in this county?

Mr. Moore: Lets see if we can get these names from Miss Williams.

Judge Bell: All right. Mr. Moore, it wouldn't prove anything if you found a man's name on the list who lives in another county, you would have to show that somebody had served on the grand jury, or served on the traverse jury who is no longer living in the county. It is conceivable that you would have some boy working in Atlanta, we will say, some young fellow that considers himself to be a resident of Taliaferro County and he would come back down there and sit on the jury. I, myself, operated like that when I was a young man down at Americus, Sumter County.

Mr. Moore: You were advised of your rights.

Judge Bell: Well, I had a right. I was a citizen of Sumter County.

Mr. Moore: I meant your rights under the Fifth Amendment.

The Witness: I have found one that I would like to mention for the Court's consideration—

Mr. Owens: —I would like to inquire if this is in response to the question that was propounded by counsel?

Judge Bell: This is in response to the question, as to whether or not some fellow had moved out of the county and sending his children to another school in another county and still over there serving on the jury.

[136] Judge Morgan: Grand Jury.

Judge Bell: On the Grand Jury. Go ahead.

The Witness: Mr. Rastus Durham, who mentioned that his children are in Greene County now, and Mr. Arthur Brown, whose children has telephone residence in Wilkes County, this is where his children is going, and I see their names. Those are two that I immediately pick up.

Judge Bell: Have they served on the Grand Jury?

The Witness: I could not answer as to that.

Judge Bell: You see, that is not relevant unless they have served since they moved out of the county. All right. Mr. Moore, I believe you are about to run out.

Mr. Moore: Well, that concludes our examination of the witness.

Judge Bell: Now, have you got any other evidence that you want to offer? I am trying sorta set up a schedule.

Mr. Moore: Well, I have two things, Your Honor. One is I have an affidavit here and—

Judge Bell: —Wait a minute. I don't want you to offer anything. I am just trying to get a summary, just trying to size up the situation at this point. Now, you say you have got an affidavit that you want to offer?

Mr. Moore: Yes, sir.

The Court: What else?

Mr. Moore: I want to put on the Voters Registration List, the last one preceding the election and I think that will [137] close our testimony.

Judge Bell: What does that prove?

Mr. Moore: Well, you see, the Grand Jury is selected from the voters list.

Judge Bell: I see. You want to show how many people were on the list at the time the Jury Commissioners selected these names?

Mr. Moore: Yes, sir.

Judge Basis: All right, what else?

Mr. Moore: And we want to show the demography characteristics of the community.

Judge Bell: On what basis?

Mr. Moore: Well, it is information for the court in examining the petition.

Judge Bell: Well, that is a broad term.

Mr. Moore: For example, we want to show the number of people in the county, black and white by all ages, the percentage of white and percentage of black, and we want to show the number above 21.

Judge Bell: Did you take that from the Census Bureau?

Mr. Moore: Yes, sir.

Judge Bell: All right.

Mr. Moore: And we have that information reduced in an affidavit.

Judge Bell: During the luncheon recess, Mr. Moore, [138] show these affidavits and exhibits to opposing counsel and it may be you all can stipulate them. If it is Census data I know you can.

Mr. Moore: There is one other short witness that we would like to put on who will testify as to complaints, the inability to make effective complaints to the school board.

Judge Bell: All right, sir, you can put that witness on, and that will be the only other live witness that you have.

Mr. Moore: Well, we may want to put on a couple of Commissioners, but we really don't think it is necessary, Your Honor.

Judge Bell: You want to go by statistics, but the court wants to know more than that. If the luck of the draw produced this list as it is that would make a much stronger case sustaining the list than if the Commissioners used some discretion about who was going to be on the grand jury, you see. That is the only fact that the court needs to know about, and—

Mr. Moore: —Well, they almost answered that in their answer to the interrogatories, Your Honor.

Judge Bell: What does it say?

Mr. Moore: Your Honor, we ask them to answer No. 10 of the interrogatories to defendants, Jury Commissioners, we asked them this question: "Describe in full and complete detail procedures which you followed in selecting persons for the Grand Jury list of Taliaferro County, Georgia."

Judge Bell: What does it say?

[139] Mr. Moore: And they say in their answer to number 10: "From the official registered voters list which was used in the past preceding general election. As a group we selected a fairly representative cross-section of the upright and intelligent citizens of the county. There was no set procedure for this selection process. We did it as a group."

We asked in number 11: "State how you determined whether a person is upright and intelligent". And the answer to No. 11 was "Our determination was based upon knowledge already possessed by

Jury Commissioner, or Commissioners upon investigation."—

Judge Bell: In other words, you take that to mean that they selected the ones they wanted to serve on the Grand Jury list?

Mr. Moore: Your Honor, I take this to be what they do in selecting. This describes the selection process.

Judge Bell: I don't know. Suppose they put everyone on the list in some method and they had 300 whites and 100 Negroes, well, then you have the first question "Is that fair list"? But when they draw names out, or in some way they get names to go on a separate Grand Jury list they get down to where they don't have but eleven Negroes on the Grand Jury out of 130 people, I want to know, did they draw names out of a hat or did they pick out people they wanted to serve on the Grand Jury? I don't know whether that answers that or not, but I think we had better find that out because the way it stands now, with only eleven Negroes on the Grand Jury out of 130 and the county divided on the basis [140] of race it seems to me there would never be a Negro on the Board of Education between now and the end of time.

Judge Morgan: Isn't this getting down to fundamental of the case right here? Isn't this the whole crux of your case right here?

Mr. Moore: Because the Grand Jury elects the Members of the Board of Education.

Judge Morgan: Yes.

Mr. Moore: And the electing process is such that the Negroes are fenced out.

Judge Bell: Well, they don't have an election. They have a selection process, not an electing process.

Mr. Moore: The Grand Jury elects the Members of the Board of Education.

Judge Bell: Well, I know, but they select.

Mr. Moore: They elect.

Judge Bell: All right, you call it an election.

Mr. Moore: Your Honor, that is what they call it and that's what the law calls it.

Judge Bell: All right.

Judge Scarlett: Wouldn't you say they elect and select, do both?

Judge Bell: Both.

Mr. Moore: All right, and Your Honor I can put it another way and say they are discriminating in their election.

Judge Bell: If they are elected, it is a mighty small [141] electorate to say the least, and you are being excluded from the electorate with the Grand Jury. All right, well, we will stop here until after lunch and there will be the cross examination of Mr. Turner and then you can finish your case up, and in the meantime show opposing counsel your affidavits, and shorten up the other witness about the complaint because you don't want to put up too much along that line, I don't thing. And then at that time we will have to have some stipulation or some live testimony about how they select this Grand Jury and then at that point we will decide what we are going to do next.

We will recess for an hour and come back at 2:00 o'clock. Wait a minute, the Court doesn't know the

town very well. Is an hour long enough to get lunch?

Mr. Owens: About an hour and a half, Your Honor.

Judge Bell: That's too long. We never have had an hour and a half recess. But we will recess for an hour and fifteen minutes, 2:15.

The Marshal: Take a recess until 2:15.

(NOTE: Accordingly a recess was then had from 1:00 o'clock, P.M., until 2:15, P.M., of the same day at which time the proceedings were resumed as follows.)

Judge Bell: You may proceed.

Mr. Owens: All right, sir.

[142] *Cross Examination by Mr. Owens:*

Q. Now, Mr. Turner, on the list of Traverse Jurors, as previously examined by you, it is correct that included on that list is your wife, is that right? A. Right.

Q. She is on the list? A. She's on the list.

Q. And it is also true that your father is on that list, isn't he? A. That is exactly right.

Q. Any other member of your family on that list? A. No.

Judge Bell: Is that the Traverse list?

Mr. Owens: That's the Traverse list, Your Honor.

Judge Bell: Are you on the list?

A. I am not.

Q. Now, would you tell the court specifically what complaints, if any, you yourself have brought to the attention

of the Board of Education of Taliaferro County? A. At this point, I am sorry, I haven't brought any because of the fact—

Q. No, I didn't ask why. What complaints have you brought?

[143] Mr. Moore: I think, Your Honor, the witness is entitled to explain his answer.

Judge Bell: Well, he hasn't answered yet is the trouble about that. He can explain his answer but he first must answer. Now, the question would be yes, or no, or one or two, or whatever it is.

The Witness: No, none.

Judge Bell: Now, you can explain.

Q. Now, would you like to explain why? A. The reason why is that I and no other member of the colored community have had the opportunity.

Q. What do you mean by opportunity? A. The opportunity of not knowing when, where and the hour of the Board's meeting.

Q. During this procedure, did you consult you a lawyer about when the State Law—

Mr. Moore: That's an improper question, Your Honor, whether he consulted a lawyer or not.

Judge Bell: Well, we don't know what he is going to say. Let him finish his question. I don't know what he is going to say. Go ahead with the question and then we will rule on it.

Q. Did you consult you a lawyer about when the State Law of Georgia says that the Board of Education shall meet?

Mr. Moore: That question is improper, Your Honor.

[144] The Witness: Judge—

The Court: —Wait just a minute. What's improper about it?

Mr. Moore: It is improper to ask about any matter that this witness took up with a lawyer. That's privileged fact.

Judge Bell: I don't know of the fact of communicating with a lawyer is privileged. I have never heard that before. If you go into what he conferred with him about is privileged.

Mr. Moore: He is asking him what he said, Your Honor.

Judge Bell: He asked him did he consult him.

Mr. Moore: About the hours of the Board meeting.

Judge Bell: Well, suppose he says "No?"

Mr. Moore: Well, I think that is a privileged matter.

Judge Bell: I don't think so. Did you consult him or not?

The Witness: Judge—

Judge Bell: Just answer yes or no to whether or not you consulted him. You can't go into what was said.

The Witness: Yes.

Judge Bell: All right.

Q. From your lawyer or from anyone else did you determine the State Laws of Georgia specifies that the Board of Education shall meet?

Judge Bell: You see, that doesn't mean a thing in the world. If the people haven't been following the

State Laws, what [145] good does it do to ask him if he knows the Georgia Code? They have got something in the record somewhere here that they don't meet when they are supposed to meet.

Mr. Owens: May it please the Court, the record shows that they meet on the first Tuesday in every month.

Judge Bell: But he has testified that they don't meet then. He testified on direct that they do not meet when they are supposed to, and that he couldn't find out when they were going to meet.

Mr. Owens: Yes, sir, he said that he couldn't find out, and I am trying now to find out why he couldn't find out.

Judge Bell: Well, maybe he is going to take it that they don't meet at the right time, or something. I don't know. Go ahead.

Q. Have you been to the courthouse on the first Tuesday in every month? A. The time this Committee met with the board was the following month.

Q. I am asking you if you have done that? A. I was with the committee on the second attempt.

Q. And when was that? A. That was the following month after the committee met.

Q. The following month, what is the month you are speaking of?

[146] Judge Bell: October 1966.

Q. The first Tuesday in October 1966? A. We are speaking of November which was the following. It was October.

Q. October of 1966? A. If my memory serves me cor-

rectly it was October of 1966 when the Committee met with the Board of Education.

Q. And you were there? A. I was not there.

Q. Well, when did you go? A. The following month, which was November, at the same night and hour.

Q. The same night and hour? A. The following month, one month later.

Q. What day of the month was it on that you went before the Board? A. That was the first Tuesday night, if my memory serves me correctly.

Q. Were the Members of the Board of Education there? A. They were not there, or at least we did not see them, and nobody was in the Superintendent's office, if they were, they did not answer the knock on the door.

Judge Bell: What does the law say about meetings of the County School Board?

[147] Mr. Owens: It specifies, I believe, Your Honor, if I remember correctly, that they will meet on the first Tuesday, that's the time specified, and that Notice will be published in the paper once a year as to when they meet and that has been published.

Judge Bell: Now, do you have the Minutes of the School Board here so we can see if they met?

Mr. Owens: We did not bring them.

Judge Bell: Well, suppose you produce them and we can settle this, if they have been meeting when they are supposed to meet. Make a note of that, Mr. Evans, some of you over there, so we can get the Minutes and this can be very easily resolved by looking at the Minutes. Bring the Minutes from the September meeting in 1966 up to date.

Mr. Owens: Excuse me just one minute, Your Honor.

Judge Bell: All right.

Q. At anytime did you go on the first Tuesday in each month at 10:00 o'clock, A. M., to the office of the Superintendent there in Taliaferro County— A. —state the first part of that question again.

Q. At anytime did you go at 10:00 o'clock, A. M., on the first Tuesday in the month for the purpose of trying to attend a meeting of the Board of Education of Taliaferro County at the office of the County School Superintendent— A. —I did not.

[148] Q. You did not? A. No, sir.

Judge Scarlett: Didn't he say in his direct examination that he went at night and knocked on the door?

Mr. Owens: He did, Your Honor.

Judge Scarlett: And then didn't you testify just now, when you read the Minutes there, they said they held the meetings in the morning, didn't they.

Q. The only time that you are testifying about that you tried to go was in the evening hours at night on the First Tuesday in the month, is that correct? A. That's correct.

Judge Bell: In addition to producing the Minutes, Mr. Owens, produce the Notice from the newspaper that the law requires Notice, so we can compare the Minutes with the Notices and see if they have been meeting when they are supposed to, and that will be a lot better evidence than having somebody trying to remember.

Mr. Owens: Are your Honor asking that we produce those today?

Judge Bell: No, sir, you can send them in at your convenience.

Mr. Owens: Thank you.

Q. Now, you made reference to the fact that you could never get into the Superintendent's office on your direct examination. Now, would you tell us in detail when you were unable [149] to get into the Superintendent's office and who, if anyone, stopped you from going into that office?

A. If my memory serves me correctly the Judge knows that I was speaking in terms of prior to the time when we were here and—

Judge Bell: —Prior to the last trial?

The Witness: And he said not to speak from before then.

Q. Lets take since then, since October 1966.

Judge Bell: He didn't testify to that, Mr. Owens.

The Witness: I didn't say that I couldn't get into the Superintendent's office since October of 1966.

Judge Bell: He was trying to testify about prior to the last trial and I told him not to do that.

Mr. Moore: I think we can clarify his testimony, if the Court will excuse me for interrupting; if we take notice of answer to interrogatory No. 38 from the School Board in which they said "We have met at the regular meeting time every month since September 1, 1967," leaving the inference that—

Judge Bell: Well, we will look at these records. We will resolve all of that. Go ahead.

Mr. Owens: All right, sir.

Judge Bell: When you furnish that information, Mr. Owens, cite us the Georgia Law.

Mr. Owens: We will, Your Honor.

[150] Q. Now, what complaints, if any, do you have with the Board of Education other than the fact you think the parents are being treated coldly? A. I think I stated that the main complaint were lines of communication and this has completely been cut off and there were other things which would have grown out of in solving the grievances that Negro parents had if there had been lines of communication.

Q. What grievances? A. Grievances?

Q. Yes? A. As I said, the main one are the lines of communication.

Q. What lines of communication are you speaking of? A. Between the representatives of the parents of Taliaferro County and the School Board of Taliaferro County.

Q. Well, when was there no communication? A. There was none certainly in October of 1966, and not since then. There has not been any line of communication since we were here at the hearing last on the Taliaferro County school system.

Q. You mean by line of communication that the Board hadn't come and invited you into the meetings? A. No, sir.

Q. Well, what do you mean by that? [151] A. We mean that we have made attempts to go to the Board and we found that their doors were not open.

Q. The occasion you are speaking of is in the evening on the Tuesday night you told us about already? A. Right.

And we have sent letters after we were supposed to have gotten a hearing or some type of reply back after October, we never got it, and we wrote to the Chairman of the Board, as I said, somewhere in February or March, and we had made other attempts to go back that same night a month later and at the same hour and we found nobody there, so the next step was to write the Chairman of the date and the hour of their meeting.

Q. Did you ask Mrs. Williams, Superintendent of the Schools? A. No, we did not ask Mrs. Williams. I have no knowledge of asking Mrs. Williams.

Q. The only thing you have done was to write the letters? A. And also to call the Chairman of the Board of Education.

Q. Who is he? A. Mr. Horace Williams.

Q. And what did you ask him again? A. We asked him—

Q. —What did you ask him? Not we. What did you ask him? [152] A. I asked him when did the Board of Education meet, at what time, and he said that it had met and "I have nothing else to say."

Q. You didn't ask him when was the next meeting? A. I didn't have a chance to ask him.

Q. Now, in paragraph 11 of your complaint you state: "Defendants have chosen and threaten to continue to choose an all-white school board to superintend the all-black public schools of Taliaferro County, Georgia," and then you go into certain state laws. Now, would you tell the Court factually what it is that justifies your making that statement in your complaint? A. Will you state the question again, please?

Q. Your complaint states that the defendants or all the people named in this complaint, Members of the Board of

Education, Grand Jurors, Traverse Jurors, everybody you name in here, have chosen and threaten to continue to choose an all-white school board to superintend the all-black public schools of Taliaferro County, Georgia. Now, factually, what are you referring to when you make that statement? A. What I am referring to—

Mr. Moore: —Just a minute, Mr. Turner. Your Honor, it is already stipulated that the school board is all-white, and the evidence is before the court that they threaten to choose additional white members—

Judge Bell: No, that they did, not that they threaten. [153] Did they do it, not that they threaten to do it.

Mr. Moore: They threaten because the Board of Education itself has elected two members to fill a vacancies—

Judge Bell: Yes, but—

Mr. Moore: —And according to the stipulation, the election of the Board of Education has to be confirmed by the Grand Jury.

Judge Bell: We know all of that, but the question is; is there anything that Mr. Turner had in mind when he alleged this in his complaint. Now, he has got a right to ask that.

Mr. Moore: I don't see how that makes a difference. That's a conclusion.

Judge Bell: Well, that's up to the court. That's for the court to decide. Objection overruled, go ahead and answer that Mr. Turner. Do you know of anything specifically?

The Witness: I certainly do.

Judge Bell: What?

The Witness: The fact that there have been vacancies since there has been an all-black school in Taliaferro County and there has been no attempt to put Negroes on that board.

Q. What individual defendant, or defendants, have threaten to continued in the future to see that all white people serve on the Board of Education? A. If it please the Court, I will just have to repeat it—

Judge Bell: Well, we understand that. But do you know [154] of any person, any individual, who has said that they are not going to put any Negroes on the school board?

The Witness: I don't know of any certain one.

Judge Bell: All right, that is what he is trying to find out. Finally what they mean by that in their complaint is that the facts show that they have had vacancies and never have put a Negro on the school board. All right.

Q. Do you yourself know of any Negroes who have appeared before a recent Grand Jury and urged the election of a Negro citizen—

Mr. Moore: —Objection. I object to that as being irrelevant and immaterial.

Judge Bell: How is that?

Mr. Moore: It doesn't make any difference whether they appeared or not.

Judge Bell: Well, he is exploring to see what efforts they have made. We know that they don't have to go before the Grand Jury, but he is just trying

to find out if they have been. I don't know how you would appear. You would have to first get permission to appear before the Grand Jury. Just answer the question, do you know or do you not?

The Witness: I do not.

Judge Bell: All right.

Mr. Owens: Give me just a minute, Your Honor.

Judge Bell: All right.

Mr. Owens: We have no further questions. Yes, one [155] further question, if I may.

Judge Bell: All right.

Q. In paragraph 18 of your complaint you have alleged that as a result of the conduct of all of these defendants that you and all the members of your class are unable to enjoy the full and equal benefit of public education in Taliaferro County, Georgia, free of discrimination or segregation because of their race or color. Now, what do you mean by that allegation in your complaint? A. I think, in plain words, we feel that an all-white board cannot plan an all-black school system. I don't think it is hard to see this. This white board has problems that are not similar to the Negro community and for that reason they are not acquainted with the technique and the approach to really solve the Negro problems as far as education is concerned.

Q. Now, is this Negro educational or social problem?

Mr. Moore: I object to that, Your Honor, that has nothing to do with it, whether it is social or educational.

Judge Bell: Well, it has a great deal to do with it. The court construes that paragraph of the petition to mean, based on the evidence, that the First

Amendment has been suspended in Taliaferro County to the extent that citizens can't assemble before their officials and petition for their grievances. That's been the evidence. That's number 1. Number 2 he says is because there is no Negro representation on the school board, that the school board is all white, that they can't give any counsel or [156] advice to their problems that are peculiar to a Negro school, and then you want to know if it is social or economic.

Mr. Owens: Social or educational problems.

Judge Bell: Well, I don't know how you would separate social or educational problems. It seems to me that schools are great instruments of social problems or social endeavors. Are you talking about a picnic or are you talking about a way to live, learning and being educated?

Mr. Owens: May it please the Court, I want to know whether this witness' grievance is as to the amount of learning that the Negro children are now getting, or to what the condition is.

Judge Bell: Well, his first complaint, he has already gone into some detail that he can't assemble, that he can't petition for his grievances, that the school board won't let him come before them. That's number one. Number two now, he said that the white school board doesn't understand the problems of the Negro community enough to run the schools as they should be run, and that if they had some Negroes on the school board they could have better Negro schools. Now, you are saying, is that social? Can you answer that, Mr. Turner? I don't know just what he means by "social".

The Witness: To the best of my ability, Judge, I think it would be both, social and educational.

Judge Bell: Now, where do you separate social and education?

[157] Mr. Owens: May it please the Court—

Judge Bell: —What do you mean by social? Let me ask you a question. Are you talking about social in a sense that you go to a party together, or are you talking about social from a standpoint of sociology, where you need to get an education to make a living and those sort of things, to be a better citizen?

Mr. Owens: Well, may it please the Court, I may have one idea of social and the witness may have another.

Judge Bell: Well, that was what I was trying to point out.

Mr. Owens: When the witness comes here and makes a broad allegation about grievances—

Judge Bell: —Well, did he say anything about social?

Mr. Owens: —And that they can't handle these problems. I am trying to find out what he is speaking of.

Judge Bell: Did he say anything about social?

Mr. Owens: He hasn't yet, Your Honor.

Q. What complaint, other than the so-called lack of communication? A. I think I have stated some three or four times that the communication was the main, number one, and that if there had been communication we could have had an opportunity to discuss together, and is my thinking that in communication maybe that two could have discovered problems that neither one could have, but there were certain problems that we had found that the Board,

[158] I don't think, really was aware of and that this communication could have been very helpful, this line of communication.

Q. Now, I believe you stated that you are a freeholder?
A. Yes.

Q. How much real estate do you own in the county? A.
In terms of acreage or in terms of value?

Q. I want you to tell us both, the quantity of land and the value?

Judge Bell: Well, I don't know that you need to know that. I suppose he can answer it; but he said he was a freeholder.

Mr. Owens: Yes, sir, we just want to know what he means by that.

Judge Bell: I know, but now you want to go into his financial statement.

Mr. Owens: No, sir. He asked how I wanted it. Either way suits me. We don't insist upon any type of description, whether he owns a house or a lot.

Judge Bell: The Court is not going to let you go into his financial statement.

Mr. Owens: We don't desire to do that, Your Honor.

Judge Bell: All right.

Q. You own a house and lot? A. I do.

Q. Is that what it is? A. That's what it is.

[159] Judge Bell: How much land does your father own?

The Witness: My father owns around about a 150 acres.

Judge Bell: How much does your grandfather own?

The Witness: It's the same land that my grandfather owns.

Judge Bell: They own it together?

The Witness: My grandfather has willed it to my father.

Judge Bell: Is he living now?

The Witness: He has given it to us.

Judge Scarlett: Well, if he didn't make a will, he made a deed then, is that it?

The Witness: I am sorry, Judge.

Mr. Moore: I don't know whether that is important or not.

Judge Bell: Well, don't you get off into this land business now.

Mr. Moore: I want to know, in view of that, if it is a will, or—

Judge Bell: Well, we are out of the land business. All right, now, Mr. Evans, do you have any questions?

Mr. Evans: I might ask one.

Judge Bell: All right.

Cross Examination by Mr. Evans:

[160] Q. Mr. Turner, when you were talking about communications, I would like to ask you: Did you ever pick up the telephone and call Mrs. Williams, the Superintendent, and find out when the meeting was? A. I have tried to call Mrs. Williams and the 'phone didn't answer many times in the office. I thought one time that I had found her, and I called the private school and the person who was attending

the 'phone said "Hold on just a minute, and I will get her for you." And when she came back she said "I am sorry she is not here." This was the only time really that I thought we were getting close to talking to her on the telephone.

Q. Did you ever write a registered letter to Mrs. Williams? A. No, sir, we did not.

Q. Did you ever send a telegram to Mrs. Williams? A. I don't remember.

Judge Bell: Can you send a telegram in Crawfordville?

The Witness: You can send a telegram.

Judge Bell: I don't know, I am trying to find out if they have got a telegraph office there.

The Witness: You can send one.

Judge Bell: All right.

Mr. Evans: I will ask the Court to take judicial notice that the School Superintendent is the ex officio Secretary of the County Board of Education.

[161] Judge Bell: Well, let me ask Mr. Turner: Did Mrs. Williams, the County School Superintendent have an office?

The Witness: She does.

Judge Bell: Where is it?

The Witness: In the court house.

Judge Bell: Does it have a telephone in it?

The Witness: It has. It ringed.

Judge Bell: Is there a secretary in there?

The Witness: I don't think she has a secretary.

Judge Bell: Is there anybody else in the office—do somebody else occupy the office besides Mrs. Williams?

The Witness: Not that I know of.

Judge Bell: Not that I know of. All right, anything else before we excuse Mr. Turner?

Mr. Moore: One or two questions, Your Honor.

Redirect Examination by Mr. Moore:

Q. Mr. Turner, do you have any specific complaint about the quality of teaching in Taliaferro County at the present time?

Judge Bell: This is getting far afield now.

The Witness: The only way that I could evaluate the [162] quality of teaching that is given at the school is what I see in my children when they come home, and working with them I can't say that I have had the freedom to visit or to go and to feel free in the school system of Taliaferro today to get even get a bird eye view of what type of educational program they are providing for the children inside of the walls. Now, from what my children are bringing home in terms of achievement, I would say no.

Mr. Moore: No further questions. You can come down.

Judge Bell: All right, you can be excused, unless you have another question, Mr. Owens.

Mr. Owens: I would like to ask one further question, Your Honor.

Judge Bell: All right.

Recross Examination by Mr. Owens:

Q. In your complaint you also state that the policy, custom, practice, and usage of the defendant school board has been such as to deprive the plaintiffs and members of their class of textbooks, facilities, laboratories, recreation facilities, teaching programs, bus transportation, and a multiplicity of other advantages which should rightfully be theirs, etc. Now, what do you mean when you put that in your complaint? [163] A. I think I have partly answered that question when I say that really to look at the situation, well, the only way to look at it is generally from the outside, and I said that a bird eye view is when you go inside. My children are the ones and the only real way that I can determine, and I think that this is the method which I have used.

Judge Bell: This has gone on far enough now, Mr. Owens. There has been a complete failure of proof on most of those things you ask for. Now, why do you want to go into that?

Mr. Owens: I just want to make sure, if I haven't referred to that, Your Honor.

Judge Bell: Well, it is already stipulated that they have got a school bus system. That's wrong. You see, on most of those things there has been a failure of proof. This case really gets down to one question, and that is the question of whether they are going to have any Negroes on the school board in a county where they have nothing but Negro schools. That's what it gets down to. Now, we have got the Jury System under attack, we have

got all sort of things going on, side issues, but this is really all that it amounts to, and the question the Court is going to have to decide is what to do about that. Now, if we are going to try to run the Grand Jury, then we are going to have to go into the jury system, but if there was some way that you could get somebody on the school board from the Negro [164] community, and then you might not have to go into all these other things. You can go down, Mr. Turner.

Do you have another witness that you want to put on something about complaints? In other words, is it the same kind of evidence?

Mr. Moore: It is essentially the same evidence, but I think it is a little better though.

Judge Bell: Well, put it on then. I don't to tell you how to run your case.

Mr. Moore: Mrs. Allen, will you come around to the witness stand?

Judge Bell: I think the idea, if there is any proof of it, I mean if there is no rebuttal to it, that the citizens can't even get to meet with the school board, which would be pretty bad, but of course the defendants say that they have been meeting at the regular time and nobody comes to the board. Let her come up on here, and swear her in, Mr. Clerk.

[165] MRS. MARY ALLEN, sworn for the plaintiffs, testified.

On Direct Examination By Mr. Moore:

Q. Mrs. Allen, will you speak up so we all can hear you?

Judge Bell: Now, what did you say your name is?

The Witness: Mary Allen.

Judge Bell: Mary Allen?

The Witness: Yes, sir.

Judge Bell: Now, are you "Mrs.," or "Miss"?

The Witness: Mrs.

Judge Bell: All right.

Q. Now, Mrs. Allen, in the school year 1966 and 1967, did you have a child enrolled in the Taliaferro County School System? A. I did.

Q. What was your child's name? A. Sandra Allen.

Q. Did you have any other children? A. No.

Q. And what grade was she in? A. I beg your pardon. I have a young girl that lives with me since she was 12. She was in the high school at that time. She was there, but she is not my child, she just lived with me.

[166] Q. All right, and how old is Sandra and what grade is your child in? A. Fourth grade.

Q. And did you have occasion during the school year 1966-1967 to go to the school? A. I did.

Q. And what was your purpose in going there? A. Well, the first time I went up there, I got a call from the teacher. The teacher said that my daughter was sick and that I should come and pick her up and so I went over and picked her up and so she told me "I had been intending to talk to you. Your little girl is failing." She said: "She has

to be placed back to group number three from group one," and I said: "Well, if you have to place her back, why didn't you tell me, and if I had known there is perhaps something that I could have done to help." I said: "What can I do?" Before then she had been an "A" student. Then to place her back in group three without my knowledge disturbs me. I said: "In what class does she fail?" She said: "Math." So, I got a fellow, a young fellow, from the high school—there is a young girl that lives with me, she attends the high school, and she told me that this excellent student in the high school would come in and help her, and so I asked him if he would, and he said: "Yes, I will come in and help her." I said: "I will pay you." So he came in and helped her, so after about a month I thought she had improved and then [167] I wanted to go back but before I did I called the school and asked if parents could visit the school and I was told yes by the principal, that parents can come to the school. I said: "Well, can I come over and talk to the teacher about my daughter?" He said "Yes." I didn't go that day, but I went another day, another morning with her. I called him on a Thursday or Friday, but on a Monday I went with her. So I went to his office. He said: "You will have to come by the office and get my permission." I went to his office and I asked if I could have permission to go in and talk with her teacher. My purpose in going in the first place was to find out if she had improved any. So he said to me: "Yes, you can go in. Just go on in." And I did, I went to the door and I asked the teacher, Miss Hadden, if I could come in. She said: "Yes, you can come in." She said: "Did you go by the principal's office?" I said: "Yes, I did." She said: "Well, come in and have a seat." I said: "I don't want to stay long because I had an appointment and I could only stay

about fifteen or twenty minutes, but I did want to sit in for just a little while in her class to see if she was improving", and there was one other thing I wanted to see too, and I want to tell you about it; but I took a seat. She gave me a chair and I set there, and I was there about five minutes and the Superintendent started in the door. I saw her. She started in the door and then she turned, but I can't say where she went, I don't know. I didn't try to find out, but I did see her start in the door, and then she turned [168] and she came a few minutes after that and pushed the door open and said: "Miss Hadden, discontinue this class until the parents leave." Well, it was a shock to me. I had gone through the regular procedure, and—

Judge Bell: Wait a minute. You don't have to tell how they insulted you. The Court can draw its own conclusion about that. Did they put you out?

The Witness: He didn't push me out. He told her to discontinue her class until I left. I didn't want to interfere with the class.

Judge Bell: What happened then? Did you leave?

The Witness: I left. I told them "No, don't do that because I didn't come to interfere. The main thing I came for was to find if my child was improving. She said: "Well, there has been some improvement and we put her back in group two.

Judge Bell: All right.

Judge Scarlett: Did you talk to your child any in class? Did you talk to your child any while she was in class?

The Witness: I didn't talk to anybody. I just took a seat.

Judge Scarlett: I know, but after you took a seat and you were in that class, then did you talk to the child?

The Witness: I didn't talk to anyone.

Judge Scarlett: All right.

The Witness: I just took a seat to look on, and my [169] main reason for wanting to look on, of course, I know I could have asked her and she could have told me; but the main reason I wanted to look on was because there was something else that disturbed me. I noticed—of course, I didn't notice before I found out that we had this little problem, but I did notice, for instance, like today she would come home and say "My lesson is on page 25", and then when she would go back to school the next day and come home she would say: "Mamma, we studied this. She didn't even hear the lesson on 25. She turned me over to 73 or 13 or something like that, we didn't even study that, so—

Judge Bell: All right, wait a minute. Lets don't go into that any more. You have established the fact that you had a problem with the child.

The Witness: A real problem.

Judge Bell: What the court is interested in is the fact that you were not allowed to stay there or to visit there to check up on your child. Now, is there anything else you can tell us about that?

The Witness: Well, the principal told her to discontinue the class, so—

Judge Bell: —All you know is that you were invited in there with permission?

The Witness: That's right.

Judge Bell: You were sitting in there and you saw Mrs. Williams, the Superintendent—

[170] The Witness: —I saw her come to the door, and push the door open, but she didn't come in. Really—

Judge Bell: —Now, wait a minute. The next thing you know, in a few minutes—how long was it?

The Witness: About three minutes, I reckon.

Judge Bell: About three minutes?

The Witness: About three minutes. I wasn't even expecting that.

Judge Bell: You said the principal came in. What was his name?

The Witness: The principal just pushed the door open and said "Miss Hadden"—

Judge Bell: —Wait a minute.

The Witness: Discontinue the class—

Judge Bell: —What was the principal's name?

The Witness: Mr. Teleton.

Judge Bell: How do you spell that?

The Witness: T e l e t o n, I believe. I am not sure.

Judge Bell: Mr. Teleton?

The Witness: I may be wrong.

Judge Bell: And the teacher's name was Miss Hadden, you say?

The Witness: Hackney, I think it is.

Judge Bell: Well, how do you spell it?

The Witness: H a c k n e y, I think it is.

[171] Judge Bell: All right, the principal said to discontinue the class until the parent leaves?

The Witness: Until the parent leaves.

Judge Bell: What else happened then?

The Witness: I got up. I didn't want her to do that because I didn't want to interfere.

Judge Bell: I know, but did you leave then?

The Witness: I left then. I told her that I was sorry, that I hope I had not made any real trouble for her. I wasn't looking for trouble. I didn't want any trouble. I just wanted to find out about my daughter.

Judge Bell: All right.

Q. Did you try to meet with the Board of Education?

A. I did. I went back to the principal's office and I asked him why did he do me that way, and he just refused to talk with me. Another teacher came to me and said "I know why that—

Judge Bell: —Wait a minute. You can't tell what somebody else told you.

Mr. Moore: Just a minute, Mrs. Allen.

Judge Bell: That's hearsay. Just strike that, anything that somebody else told her.

Q. Now, Mrs. Allen, after you went to the school and was put out and treated inhumane—

Judge Bell: Now, wait a minute, Mr. Moore. That's up [172] to the court to decide whether she was treated inhumane or not. Don't get us off the bench. Don't displace us altogether. Just ask the question. Don't make a speech now. We are not having any closing arguments now.

Mr. Moore: All right, sir.

Q. Mrs. Allen, did you make an attempt to present your grievances to the Board of Education? A. Well, the first thing I did was to try to see if we could have a PAT.

Judge Bell: Wait a minute. I want to ask you a question myself. You went to the principal and asked him why he did you like that?

The Witness: I did.

Judge Bell: And you say he wouldn't talk.

The Witness: He wouldn't talk.

Judge Bell: All right, now let's go to the school board.

Q. Did you try to meet with the Board of Education? A. After I had tried with the principal to see if we could have a PTA.

Q. When did you try with the principal to see if you could have a PTA? A. About a week or so after the meeting, after I went to the school.

Q. Were you permitted to have a PTA? A. He told me, he said: "We are not going to have a PTA." He said: "You can see the principal over at the high school [173] and see what he says. I don't know what he is going to do, but we are not going to have the PTA this school term", well, at that time I was acting—well, I was the last secretary the PTA had and I had all that PTA material, so I called the principal at the highschool and I asked him if there was going to be a PTA. I said: "I have other material and I need to know and I have some problems." I wanted to have some kind of communication with the teacher, one that I could talk to and maybe she could help me with my daughter. That was my main concern.

Judge Bell: All right, what did he say about the PTA?

The Witness: He told me, he said: "I don't know. Mrs. Williams hasn't said so yet." He said: "Do you want me to call her? Do you want me to ask her, or do you want to ask her?" I said: "No, I didn't want to ask her. I thought I was suppose to talk to the principal." He said: "Well, I will ask the Superintendent and I will let you know." I said: "Well, I will call you back. I called him back and he said the principal said we couldn't have any PTA.

Q. The principal or the Superintendent? A. The Superintendent said that we couldn't have no PTA.

Judge Bell: Now, wait a minute. The principal told you that?

The Witness: The principal told me that and that was when I decided to go with a committee and I went to get [174] on that committee then to see about the PTA. My only concern was my daughter.

Judge Bell: Wait a minute now. Don't go back onto that now. Now, you wanted to get the PTA?

The Witness: Yes, sir.

Judge Bell: Now, what we want to know is, did you go to see the school board?

The Witness: I went to the board. I was—

Judge Bell: —Just a minute. Now, what month was that? What year?

The Witness: Well, I don't remember the month, but it was the same time that PTA—that we met the Board. Well, I wasn't the secretary of that committee but—

Judge Bell: —I know, but have you got any idea what year it was?

The Witness: I really didn't keep that in mind, Your Honor, but it was the same time the committee met with the board.

Judge Bell: Was it the same time that your daughter was in the Fourth grade?

The Witness: Yes, sir.

Judge Bell: What grade was she in when she had this trouble?

The Witness: She was in the Fourth. She is in the Fifth now.

Judge Bell: Well, it was last year, the last school term, sometime?

[175] The Witness: Yes, sir, but I didn't keep any record of it.

Judge Bell: Well, did you go to the school board?

The Witness: I went with a committee, in fact, I took a committee down to meet the board because I wanted to talk about a PTA. That was what I wanted to know about then.

Judge Bell: All right, go ahead.

Q. Now, Mrs. Allen, you went to the school board? A. What?

Q. You went down to the school board? A. I went to the school board.

Q. Did you go in the daytime or the nighttime? A. We went at night because that is when the board meets now.

Q. Were you able to see the board? A. No, sir. We were asked to come in. We went in, and when we walked in the Superintendent said that only three can come in because we don't have seating space, and she said "What do you want? Have you got a grievance?" And a lady back in the rear said: "We have some grievances." I didn't say anything. She said: "We have some grievances that we want to discuss with the board." And she said "state it." Nobody else said a thing. Well, difference ones talked, different ones of the representatives said what they had to say. I didn't say anything right then, but when it came my time I said: "I want to know about [176] the PTA. I am here with a problem about my daughter and I want to know about a PTA." I said: "If I can't talk to the teachers I just need to know—"

Q. This was in the school board meeting, is that correct?
A. I beg your pardon?

Q. This was at the school board meeting? A. That's right. We asked them a few questions, and then one member got up and said I offer a motion that the meeting be adjourned—

Judge Bell: —Now, wait a minute. Was this in the courthouse?

The Witness: It was in the courthouse.

Judge Bell: And it was at night.

The Witness: It was at night.

Judge Bell: All right, how many people were in your group?

The Witness: Your Honor, I didn't count them. I know there were two cars but only a few were allowed in.

Judge Bell: I know, but did you have eight or ten in your group?

The Witness: Something like that.

Judge Bell: How many went into the office?

The Witness: Approximately five of us.

Judge Bell: Who else was in the office besides Mrs. Williams—the School Board Officials?

[177] The Witness: I assume all the school board members. I don't know.

Judge Bell: Were they sitting around?

The Witness: Yes, sir.

Judge Bell: How long did you stay in there?

The Witness: About ten minutes.

Judge Bell: And then they moved that the meeting be adjourned?

The Witness: That's right, and put the heater out. They had the heater on and a gentleman put the heater out and we walked out. He started putting the lights out too and we walked out and then they closed the door.

Judge Bell: Did they give you an answer at all as to your complaints?

The Witness: No answer.

Judge Bell: No answer?

The Witness: No, sir.

Judge Bell: Have you had one since then?

The Witness: No, sir.

Judge Bell: All right, go ahead, Mr. Moore.

Q. Is this the only time that you have been able to go to the school board? A. That was the only time I ever tried.

Q. Now, you have moved from Taliaferro County? A. I have moved from Taliaferro County.

[178] Q. When did you move from Taliaferro County? A. I moved in August.

Q. In 1967? A. In 1967.

Q. Where did you move to? A. I moved to Greensboro.

Q. And do you have a child enrolled in Greensboro? A. I have.

Q. Was your purpose in moving to Greensboro to get better education? A. To get communication. A child in school and you can't even talk with the teacher and can't go and sit in the classroom and can't talk to the board, can't talk to anybody, nothing about your problems.

Judge Bell: Have you ever talked to the teacher at Greensboro?

The Witness: I have been to the school. I go to the PTA once a month. I talk to the teacher. We can go in the classroom. Your Honor, you see, I don't want to make trouble.

Judge Bell: I know that, but—

The Witness: —May I tell you why I had a problem.

Judge Bell: Wait a minute. Now, we are not running a school system. I am sorry about your child but we can't go into all of that. We want to find out about your dealings as a citizen with the school and with the Board of Education. That [179] is really what we are interested in, how you were received and what happened and so forth with the School Board and the School Superintendent.

The Witness: Well, we were received.

Judge Bell: All right.

The Witness: But we got no answer.

Judge Bell: All right.

Q. Do you know any white children from Taliaferro County attending school at Greensboro? A. I don't know the people by name, but I saw them.

Judge Bell: She doesn't know their names. Wait a minute. If there is anything like that going you can re-open the other case. We are not going to try that case today though.

Mr. Moore: I just want to ask her one question—

Judge Bell: The Court has got an outstanding injunction on that.

Q. Did you see kids coming from Taliaferro County?

Mr. Owens: If the Court please—

Judge Bell: You don't have to object. I am getting ready to terminate this now.

Mr. Moore: I have no further questions.

Judge Bell: All right.

Mr. Moore: I have an affidavit from an Instructor in Sociology at the University of Massachusetts. I have given a copy—

Judge Bell: Well, what does he know about Georgia?

[180] Mr. Moore: Well, he has studied the—

Judge Bell: Taliaferro County. Is he an expert on Taliaferro County?

Mr. Moore: Your Honor, he has studied the Census Bureau. He is a Demographer.

Judge Bell: All right.

Mr. Moore: And one additional thing he has done that will save the Court some time. He has figured the percentage in every relevant age group and racial group based upon the Census Report, and we would like to offer his affidavit, Your Honor.

Judge Bell: Any objections to that?

Mr. Owens: Yes, sir, we object to it.

Judge Bell: Why?

Mr. Owens: For \$1.25 one can buy a little blue book that has got all the Georgia statistics in it and of course will speak for itself. It seems to me like we don't need an affidavit from somebody in Massachusetts as to what is in this blue book.

Judge Bell: Well, tell you what we will do—why don't you introduce the Blue Book?

Mr. Owens: We will be glad to, Your Honor.

Judge Bell: We will let him introduce the affidavit and we each one of them such credit as we think they merit.

Mr. Owens: We just hate to burden the court with trying to interpret an affidavit.

Judge Bell: Well, we will check it against the school book. I think we have got some of those that have been put in [181] in other cases.

Mr. Owens: Yes, sir.

Judge Bell: I don't mind having it. I have got a large library.

Mr. Moore: All right, then offer into evidence subject to whatever objection they have as to Plaintiffs Exhibit No. 2, this affidavit of—

Judge Bell: —What is that, the same man?

Mr. Moore: Yes, sir.

Judge Bell: The same affidavit?

Mr. Moore: Yes, sir.

Judge Bell: Oh, you mean you are just offering it now?

Mr. Moore: Yes, sir.

Judge Bell: And your objection, Mr. Owens, will be noted and we will admit and give it such weight as the Court thinks it is entitled to. That will be Plaintiffs' Exhibit 2.

Mr. Moore: Yes, sir.

Judge Bell: All right.

Mr. Moore: We would like to call an additional witness, Your Honor, Mrs. Claudia Richards.

Judge Bell: What is this about?

Mr. Moore: We want to put in for the record the voting list for the last general election.

Judge Bell: Well, why is that important? Why is it relevant?

Mr. Moore: Well, this is the list from which the Grand [182] and Traverse Jurors are selected.

Judge Bell: You just want to offer the voters' list?

Mr. Moore: Yes, sir.

Judge Bell: And it has White and Negro citizens on it?

Mr. Moore: Yes, sir.

Judge Bell: Well, why do you have to have a witness to do it?

Mr. Moore: Well, if she is here I would like to put her up. I don't have the list myself.

Mr. Owens: She says she has got it, Your Honor. She is sitting right here.

Judge Bell: Well, if she has got it in the courtroom she will have to produce it. That's the rule, you know.

Mr. Owens: She has never received a subpoena, if it please the Court, in the courtroom or anywhere else.

Judge Bell: Well, I say that if she has got that list in this courtroom she has got to produce it.

Mr. Owens: All right, sir.

Mr. Moore: We will stand on the information we have got in the interrogatories, Your Honor.

Judge Bell: You have got the statistics then?

Mr. Moore: Yes, sir, we have got the information that they admit there were two thousand—

Judge Bell: —Well, that's enough. You don't want to over-prove your case. That's in.

[183] Mr. Moore: All right, sir.

Judge Bell: Now, wasn't there some other affidavit that you had this morning that you were talking about?

Mr. Moore: We have the affidavit of Mr. Marvin Walton, Custodian of the records of the Southern Regional Council, which list Georgia counties and the relative number of voters by race and percentage of registered voters in each county.

Judge Bell: Well, we don't need that. We only need them in Taliaferro County, and Mr. Turner has already testified that there 949 Negro voters and he also said there were a few more white voters on the list than are actually living and we will of course consider those things. We don't need that. If you want to offer it we will be glad to exclude it. It won't help you one way or the other.

Mr. Moore: Your Honor, we move the admission of all the documentary evidence, move the Court to receive all the answers to the interrogatories and requests for admissions and rest our case.

Judge Bell: All right, you are offering the answers to the requests for admission and you are offering the answers to the interrogatories?

Mr. Moore: Yes, sir.

Judge Bell: Any objection to those, Mr. Owens?

Mr. Moore: That would be his answers.

Judge Bell: I know, but he can object on the ground [184] that some of them may be irrelevant or something like that.

Mr. Owens: We would like to have the right to submit our objections, Your Honor, I can't remember everything in there now. We think that practically most of them are irrelevant.

Judge Bell: Well, we will admit them subject to your motion to strike at a later time.

Mr. Owens: All right, sir. Thank you.

Judge Bell: And that brings us to this point now. Do you have any more evidence to offer, Mr. Moore, that you can think of? Are you about ready to rest?

Mr. Moore: Your Honor, we rest.

Judge Bell: All right. Now, Mr. Owens, do you have any evidence here now that you are ready to to put on, somebody to explain why there is only ten or eleven Negroes out of 130 on the Grand Jury, how you went about doing that?

Mr. Owens: Yes, sir.

Judge Bell: All right, let's get that part of it out of the way.

[185] CLARENCE GRIFFITH, sworn for the defendants, testified.

Direct Examination by Mr. Owens:

Q. Mr. Griffith, will you state your full name and place of residence, please? A. Clarence Griffith, Crawfordville, Georgia.

Judge Bell: G r i f f i t h?

The Witness: Yes, sir.

Judge Bell: All right.

Q. Are you a Jury Commissioner? A. Yes, sir.

Q. And that's for Taliaferro County, Georgia? A. Yes, sir.

Q. When were you appointed as a Jury Commissioner? A. On June 24th, 1964.

Q. And you have served continuously since that time? A. Yes, sir.

Q. Now, I would like to direct your attention to the revision of the Traverse Jury list for the year 1967.

Judge Bell: Excuse me a minute. Are you the Chairman of the Jury Commissioners?

The Witness: Yes, sir.

Judge Bell: You are the Chairman. All right.

[186] Q. And I hand you now what has been admitted as Plaintiffs' Exhibit 1-A and B. You will notice the top is labelled Grand Jurors and the second sheet is labelled Traverse Jurors. Now, first of all will you tell the court who the other Jury Commissioners were who served with you at the time this Traverse list was compiled? A. Mr. Louis

Lunceford, Mr. Milton Taylor, Mr. Reuben Jones, Mr. Guy Beazley, Mr. E. C. Moor and myself. I believe that's right.

Q. What was the source of names that you used in preparing this Traverse Jury list? A. We used the voters' list registration.

Q. For which election? A. It was the previous election, the last one.

Q. The previous General Election? A. Yes, sir.

Judge Bell: Is that the latest list available?

The Witness: Yes, sir.

Q. Now, would you tell the Court in detail just how you and the other Jury Commissioners went about selecting people to serve as Traverse Jurors, that is, putting their names on the list that is before you? A. Well, each one of the members on the Jury Commissioners—the County is divided up in districts—each man was selected from the particular district that he lived in.

[187] Q. The Militia districts? A. Yes, sir, and it was a good representation of the whole county on there.

Q. There were somebody from each Militia District who is a Jury Commissioner? A. Yes, sir.

Q. All right, sir. Now, did all of you meet in some particular place? A. Yes, sir, we met in the Clerk of Court office, Mr. Ralph DeLuke.

Q. Did he have anything to do with your meetings? A. He was serving as our clerk, doing the book work for us.

Q. Now, did you have this list? A. Yes, sir, we had the list and we would call out the names in the districts of the people who were registered on the voters' list in that particular district. I believe Raytown is the first one and Mr. Moore is from that district and—

Q. Your voters' list is divided up into precincts, or is it just an alphabetical list? How was it made? A. I think it was divided up into precincts.

Q. All right, sir, you took it by precincts? A. Yes, sir, and we would go over the names and if he thought they were qualified or would make a good Juror he would ask that their names be put in the box and then the other [188] Jury Commissioners would ask questions about the person, and then if everybody agreed we would put that person's name in the jury box.

Q. Now, sir, what ages were you using as a beginning and ending point for prospective jurors? A. From 21 to 65.

Q. All right, sir, what other qualifications were you using? A. That they be an intelligent and upright citizen, and people that we felt would be capable of interpreting proceedings of court and to render a just verdict and things like that.

Q. All right, sir. Now, prior to today did you know actually how many people of the Negro and White race by number were on the list of Traverse Jurors that's before you? A. No, sir.

Q. When did you first, for yourself, determine how many names on that Jury list were white and Negro persons? A. Just about five minutes after two.

Q. Back in the jury room when I asked you to come back in there? A. Yes, sir.

Judge Bell: Did you discuss putting Negroes on the list when you had your meeting?

The Witness: Sir?

[189] Judge Bell: When you had your meeting of the Commissioners to make up the list, do you re-

member any discussion about putting Negroes on the list?

The Witness: We were instructed to put Negroes on the list.

Q. Who instructed you? A. Judge Stephens, Superior Court Judge.

Judge Bell: All right, sir.

Q. All right, sir, now on that same list, how many names do you yourself identify, the Traverse Jury list, as being those of Negro persons? A. How many did I?

Q. Is this the list that you went by? A. No, sir, this is not the one.

Judge Bell: Mr. Moore picked it up. Didn't you get the list he had in his hand?

Mr. Moore: I took that out to give him the exhibit, Your Honor, because this wasn't an exhibit at—

Judge Bell: —I know, but he has got marks on it, notes on it. Didn't you come over here and get a list out of his hands?

Mr. Moore: I sure did, Your Honor, but that specific exhibit that was introduced is the one he has got.

Judge Bell: I don't care about that. I want him to get the list back in his hands that he had in there. He had some [190] notes on it.

Mr. Moore: I don't see any notes on either one.

Judge Bell: Well, is that the list you got out of his hand? Just hand it to him. Let him look. See if that helps.

The Witness: This is not the list I had.

Judge Bell: We seem to have a great mystery.

Mr. Owens: I gave him a copy we had here.

Judge Bell: Well, give that back to Mr. Moore then.

Mr. Owens: This is the Court's copy here.

Judge Bell: Well, do you think that's the list there?

The Witness: This is the list, yes, sir.

Judge Bell: I asked you how many Negroes there are on the Traverse Jury list.

Mr. Owens: Mr. Moore may have the witness on cross examination, Your Honor, but I would like to finish with him first.

Judge Bell: No, wait just a minute. He is trying to see the notes, and when you get through examining him— Wait just a minute. We are not going to have any trouble between you lawyers. Mr. Moore, you go sit down until he gets through examining him.

Mr. Moore: I just want to see the list, Your Honor.

Judge Bell: I know that, but you go take your seat. I am not going to have any altercation here between lawyers. [191] Mr. Moore, did you understand me?

Mr. Moore: Yes, sir.

Judge Bell: Well, take your seat.

Q. Now, would you compare the list that's in this file with Plaintiffs' Exhibit 1-A and see if they appear to be the same?

Judge Bell: Well, we haven't got time for him to compare all the names on the list.

Q. Now, using the list that you yourself have checked would you tell the court how many names there are of Negro persons? A. 59.

Q. On the Traverse Jury list? A. Yes, sir.

Q. On the Grand Jury list? A. 11.

Judge Bell: In other words, his figures differ on the Traverse by three from what Mr. Turner said?

Mr. Owens: That's right.

Judge Bell: And none on the Grand Jury.

Mr. Owens: That's correct.

Judge Bell: All right. Now, let Mr. Moore look at the list so he can find out whatever it is he wants to know about the notes. Go ahead. Mr. Owens, the court would like to know this: If they made up one Master List and then drew names or took some names someway off the Master List, some for [192] Grand Jury and some for Traverse Jury service.

Judge Scarlett: Do many of those Jurors ask to be excused after they drawn?

Judge Bell: He doesn't know that.

Judge Scarlett: You wouldn't know that. Who does that come before?

The Witness: That comes before the Clerk of the Court, Sheriff and Judge, Your Honor.

Judge Scarlett: In other words, if anybody was drawn and wanted to be excused they would go either to the sheriff or Clerk or who?

The Witness: I think the Clerk of the Court and the Judge excuses them. I am not sure on that.

Judge Scarlett: Well, that's about right, either the Judge, Sheriff or Clerk?

The Witness: Yes, sir.

Q. Mr. Griffith, now lets pass from the preparation of the Traverse Jury list and go to the point where you selected as a group two fifths—

Judge Bell: —Well, did you make up one long Master List of people?

The Witness: Yes, sir.

Judge Bell: Just to be on the Jury service generally?

The Witness: Yes, sir.

Q. And you made that up based on the knowledge of [193] each individual as to his own area in the County, is that correct? A. Yes, sir.

Q. Now, would you tell the Court how you determined who of all of those people would be on the smaller list of Grand Jurors, a copy of which has been shown to you? A. We went through the whole list and picked the ones we thought were the very best people in the county and put them on the Grand Jury.

Q. And put them on the Grand Jury? A. Yes sir.

Q. Did you have any particular standard that you used in selecting those people? A. No sir, we didn't have any particular standard other—other than I mean we wanted the best outstanding citizens in the county.

Q. Now, in preparing that list did you make any determination of whether or not you would include women on the Grand Jury? A. We determined that we would not put women on the grand jury.

Q. Was there any particular reason for that determination? A. Well, some thought there might be cases there that wouldn't be desirable for a lady to hear.

Q. That was the group's thinking? [194] A. Yes, sir.

Q. So, there are no women on the Grand Jury? A.
No women on the Grand Jury list.

Mr. Owens: Now, does the Court have any particular questions along that line?

Judge Bell: None at all. I think he has answered pretty well everything I had in mind. I have been troubled all day since I found out that there wasn't but 11 Negroes on the Grand Jury. That just about makes out a case of systematic exclusion of Negroes based on their race, and you have explained that by saying that you picked the best people.

The Witness: Yes, sir.

Judge Bell: But the law of Georgia is and the law of the United States is that you have to have a fair representation of people in the community on your jury list, and that also applies to the Grand Jury list, and so actually this case started out being a complaint that there weren't any Negroes on the school board, and now it has got down to the Jury system and I expect you are in pretty bad shape on that point. If there is anything on it that you want to bring out you may do so.

Judge Scarlett: That's the reason I asked the question a few minutes ago. Don't juror after juror, whom you draw, go to the sheriff or the clerk or the Judge himself and get excused?

The Witness: I don't know, Your Honor. I know I have been in court and hear the Judge or the Clerk say they have been [195] excused.

Judge Bell: When Judge Stephens gave you a charge on how to get your list up, did he give you a copy of the new laws?

The Witness: Yes, sir.

Judge Bell: And you made the list up?

The Witness: Yes, sir.

Judge Bell: You never have given him any report on how many Negroes or how many Whites are on the list?

The Witness: No, sir.

Judge Bell: I believe you said you never had counted them?

The Witness: No, sir.

Judge Bell: Not until today?

The Witness: No, sir.

Judge Bell: All right, that's about all we want to hear.

Judge Scarlett: The reason I asked the question, because since I have been Judge and that has been twenty odd years, why, down in my home county, we have several jurors drawn, of course, it is a little different from this, and when I get home in Glynn County and court is coming up this next week my telephone rings almost continuously and I excuse all that I can excuse. Sometimes the Clerk doesn't like it much because I excuse so many. A man comes to me and tells me that he has got a sick [196] child or anybody is sick or for business reasons—I don't make it a rule to excuse for business reasons, but if they have got a real good business reason whereby they would suffer a loss, I will excuse them. I bet every other Judge does the same thing, and I am not running for office either.

Judge Morgan: May I ask this question: This is apparently new law which has been enacted in 1967.

Do you make any written inquiries to any of those you have selected as Jurors as to their age, occupation, or the race, etc.? In other words, does your clerk, before placing them on that Master List make an inquiry from either the jurors or the Grand Jurors, or do you just place them on there without inquiry?

The Witness: We just place them on there without inquiry.

Judge Morgan: How would you know whether a person was 18, 19 or 20 years old?

The Witness: Well, Taliaferro County is a small county, and we know just about everybody—I mean I don't know everybody in the County, but the man that is on the Jury Commissioners from the other districts would know the people in his district.

Judge Morgan: In other words, it is your testimony that between the six of all of you would know every juror individually whom you placed on that list, either the Traverse Jury or the Grand Jury?

[197] The Witness: No, sir, I wouldn't say that I knew everyone.

Judge Morgan: I mean one of the six?

The Witness: Yes, sir.

Judge Morgan: All right.

Judge Bell: Well, I guess that covers everything the Court had in mind.

Mr. Owens: Excuse me just a minute.

Judge Bell: All right.

Mr. Owens: We have no further questions.

Cross Examination by Mr. Moore:

Q. Mr. Griffith, how many districts are there in your county? A. I think it is nine. I am not sure of that now.

Judge Bell: Well, it would be more than six, because there are 1858, or some such number in the state, so it would be more than six.

Q. And Militia District 606 is an all black district, isn't it? A. I don't know.

Q. Are there any Jury Commissioners from District 606? [198] A. I don't know where District 606 is at.

Judge Bell: Well, don't over prove your case, Mr. Moore.

Mr. Moore: Your Honor, we don't have any further questions.

Judge Bell: All right, Mr. Evans may have something.

Mr. Evans: No, Your Honor.

Judge Bell: All right.

[199] Judge Bell: Now, is there any other matter that the Court inquired about? You are going to send us those records later, the minutes and the legal advertisements?

Mr. Owens: The Court asked if any of the grandchildren of the present members of the Board of Education went to this private school?

Judge Bell: Right.

Judge Scarlett: I made an inquiry about that at the time you asked the question, did I not?

Mr. Owens: Yes, sir.

Judge Scarlett: I had my doubts about it.

Judge Bell: Now, the case with the shape it is in Mr. Bloch, we don't want to deprive anybody of any rights, but since we have this Waynesboro case,

the Burke County case, set at Brunswick on the 23rd of February, the Court will recess this hearing and pass it over to that same day at Brunswick. If you have any evidence that you care to offer at that time you may do so, anybody in behalf of the defendants. In the meantime the Court is tentatively inclined to grant your motion as to those persons named defendants who allegedly represent the grand jurors. Now, that depends finally on the remedy we have to work out. Now, assuming that the plaintiffs have made out a *prima facie* case of systematic exclusion, based on race, as to the grand jury list, I think you ought to be prepared, when you come down to the Brunswick hearing, to suggest a remedy. [200] How would you go about remedying this situation. The Court wouldn't care to put anybody under an injunction unless it was necessary. This could be an accident on the part of these Jury Commissioners that there is systematic exclusion. I don't know what procedures, you could set up in the meantime to get this systematic exclusion problem cured. It may be that you can cure it before the 23rd of February, if not, we will have to look into it further, but I am sure that no lawyer on either side wants this condition to go on. We all know what systematic exclusion is, and when there is as many registered Negro voters in a county as whites and you have 130 to 11 on the grand jury, why, that's systematic exclusion, and that will have to be corrected. Now, that's one thing.

Now, on the question of damages the Court is not prepared to rule on that. We haven't read Mr. Moore's brief and, off hand, I have been in a lot of these cases and I have never heard of any such

damages, and I don't know much about ancillary damages, but I have heard of costs being awarded, but we will hear more about that. You can answer that, Mr. Bloch, that portion of his brief, between now and the 23rd. We will rule on that motion then.

I expect the evidence is actually closed but there may be somebody wants to offer something else on the 23rd and for that reason, just out of the abundance of caution we will keep the record open.

[201] Now, on the main question, which is that there are no Negroes on the Board of Education. I don't know just what the Court can do about that, but I know that there is no one here that's a party defendant that would think that situation can continue. That just simply will not do. Now, how it can be worked out, I don't know. It is a bad thing in this country to call on the courts to solve all the problems. If you can govern yourselves, the citizens ought to solve some problems, and it may be that between now and the 23rd you can work out some way to solve the situation. There are two places, as I see it, on the School Board that have not been permanently filled. There are two men who have been elected by the school board but the grand jury hasn't confirmed them. If those two men would willingly stand aside the other members might select two outstanding Negro citizens who are land owners and good citizens to go on the Board. If you don't want to do that—I told you in the beginning that this was a pretrial conference as well as a hearing, if you don't want to do that we will know that on the 23rd. If you can do that, it will be an act of statesmanship on the part of somebody who is able

to get something like that done; but you all are living in the county together and some how another you are going to have to keep living in the county together, and you can't have an all Negro school and all white school board, because somewhere along the line some court will do something about that. I guess this is the [202] first case of this kind that has come up, but just by second nature almost to a judge now knows that that sort of thing can't continue, so the Court would hope that the citizens of Taliaferro County can solve these problems themselves, and that when we get down to Brunswick that we could terminate this matter by the grand jury list having been re-constituted and some relief having been granted to these Negro citizens about their schools. If they had somebody on the School Board they could get a hearing. You have got a right to get a hearing before any public official. And every Negro has got the same right, identical rights, as any white person before any officer of the law. We all know that. Now, we are going to leave the case in that posture, at that juncture, and set it over until February 23rd at 9:30 in Brunswick, and I hope by that time we will have the Taliaferro County situation worked out. Mr. Bloch you are a fine lawyer and an experienced man in this sort of thing and I think it is time for the people to work this out. There will be communication. All you need is for somebody to get in an office somewhere and you will have plenty of communication.

Now, Mr. Fulcher and Mr. Lewis, what I have said about the Taliaferro County situation—we don't know anything about the Burke County situation, but

what is it—a word to the wise is sufficient unto the day, or something like that; so you can be thinking about that too before you come down there, because the same situation exist in Burke County. You have got Negro [203] citizens and White citizens and have been there a long time and have got to live together some way another, so lets try to have a spirit of harmony and work some of these things out, and lets don't let the Courts have to solve everything because that's no solution in the end. The solution has to come out of the hearts of the people, the people that live in a place, so lets try to work that out. All right, Mr. Bloch.

Mr. Moore: I would like to be heard—

Judge Bell: Wait a minute. Mr. Bloch was standing up first.

Mr. Bloch: If the Court pleases, we will bear those admonitions in mind and consult with our clients and see what can be done.

Now, as I view the question of the grand jury it may be necessary for us to study what Your Honor has said for the Court in connection with the law as laid down in the Swain case, and what Your Honor, Judge Bell, said of the Swain case in—

Judge Bell: —All right.

Mr. Bloch: —with those as the yardstick and see if we are in violation of the rule therein announced and, if so, see what can be done about it.

Judge Bell: Well, now bear this in mind, there is a Supreme Court decision a good many years ago in which Justice Jackson filed a concurring opinion in which he said you could file suit under one section of the old Civil Rights Act to enjoin [204] a

jury system that was illegally composed, that you don't have to wait until somebody is on trial, so that would give the court jurisdiction, if we have to get to that point; but you will have to advise your clients what the law is on that, what is a legal composition of a grand jury, but the Court would hope that you would be generous in your composition.

Mr. Bloch: Well, I will do my best to be generous. Now, there is another question, Your Honor, the 23rd is a month off. Does the Court have in mind formally ruling on the motions that we have filed prior to the 23rd? I ask that because I want to know whether we shall file an answer before the 23rd.

Judge Bell: My own inclination would be to grant your motion as to the grand jury, or the juror defendants, not the Jury Commissioners, to dismiss them on the grounds they have not stated a cause of action against them because they are not—they can't represent an entity. It is like suing citizens on the street to represent everybody. For example, there are 11 Negroes on the Grand Jury list, and if you got damages they would have to pay part of the damages. There are 59 Negroes on the traverse list and if you got damages you would have to assess damages against them too, if you are proceeding against the jurors.

Mr. Bloch: It would be my thought, if the Court could conveniently do it within the next week or so, make a formal ruling then we would go ahead and file our answer—

[205] Judge Bell: —Well, I think probably we will overrule all of your motions—

Mr. Bloch: —Sir?

Judge Bell: I think probably we will overrule all of your motions, I believe, except—just thinking out loud—except the damages. I would prefer to postpone a ruling on that because we have not studied it enough, but on the juror defendants you can prepare an order—Mr. Moore wants to be heard on this—but you can prepare an order sustaining your motion on that.

Mr. Bloch: On the damages?

Judge Bell: No, on the jurors.

Mr. Bloch: That's 12(b) as to the jurors.

Judge Bell: Yes, but just wait right there. Mr. Moore wants to be heard from on that one motion.

Mr. Bloch: Then can I come back?

Judge Bell: Yes. Now, Mr. Moore, just argue on this one point about the jurors.

Mr. Moore: Your Honor, it is my understanding from the Court's discussion this morning that the Court expressed some concern as to whether or not we could sue an individual member as representative of a class.

Judge Bell: In the juror class.

Mr. Moore: In the juror class.

Judge Bell: All right.

[206] Mr. Moore: It is our contention that we can sue them, and it is our contention under *Mandez* against Texas that the Grand Jury of Taliaferro is an identifiable fact.

Judge Bell: A grand jury is but you have not sued a grand juror. You have sued people on the grand jury list. You can't seem to get the difference.

Mr.: Your Honor, then the proper remedy would be to dismiss the plaintiffs' claim but rather have the plaintiffs, who have made out a substantial cause against the grand jury there, an opportunity to plead in additional party defendants who are and jurors.

Jud.: And then when you get to that point, at the point on the bridge, then the question would be content relief are you seeking from the grand jury? Only relief you could possibly seek would be to try to require them to appoint Negroes to the board, and we have just finished contemplating that the grand jury is mal-constituted. What can a mal-constituted grand jury do?

Mr.: Your Honor, two things I would like to say. First is that we sued the grand jury list in the manner that we could sue air rights over a parcel of land in Fulton County, Georgia. We sue the grand jury list and the existing defendants remain in the case as the defendants on whom the suit is served so that the grand jury itself would not be notified that the suit is brought, and—

[20] Judge Bell: —Well, the Jury Commissioners are the ones that are responsible.

Mr.: Secondly, Your Honor, we attack Section 106 of the Code.

Jud.: What is that?

Mr.: This is the statute which provides for the selection of so-called upright and intelligent citizens for jury service.

Jud.: Well, that's the Jury Commissioners.

Mr. Moore: No, sir, that's not the jury commissioners. The Jury Commissioners are back a step further. They fall under Section 59-101 because they are invariably white free persons in the county. We attack that statute. We attack as a ground for injunctive relief Section 59-106, that it is a vague and indefinite statute, the result of which leads to Negro exclusion in the jury process.

Judge Bell: Well, now, here is the thing about it, just as a practical matter, Mr. Moore: Any relief, major relief you are seeking, can be obtained against school board members and against jury commissioners. Now, there is no sense on earth in making these three grand jurors that you just happened to pick out of the air hire a lawyer, go to the expense of going to Brunswick and proceeding along in this, that is just punitive almost. As far as I am concerned, if the other Judges agree to it, we are granting their motion, we are going to get them out [208] of the case. We are going to separate the wheat from the chaff, and we are going to keep the wheat in.

Judge Scarlett: I agree to that.

Mr. Moore: Then I move that we be permitted to name the grand jury list.

Judge Bell: We have already tentatively ruled that the grand jury is mal-constituted.

Mr. Moore: We would like to name that mal-constituted list.

Judge Bell: No, you don't need to name anybody else, or get any more people having to hire lawyers. These are just little people tending to their business.

and they haven't got to go about over the state following lawyers around and hiring lawyers.

Judge Morgan: The Jury Commissioners are responsible for the mal-apportionment of the grand jury list.

Mr. Moore: Then the grand jurors want to inforce the statute, but I have a question, Your Honor—

Judge Bell: What statute have they inforced?

Mr. Moore: They inforced statute 52—

Judge Bell: —Well, lets don't just call off numbers. What is it about?

Mr. Moore: They select the school board members.

Judge Bell: All right.

[209] Mr. Moore: Your Honor, I have a question I would like to ask.

Judge Bell: All right, what is it?

Mr. Moore: If I understand it correctly, if the Court strikes these grand jurors, would our claim that the statute 59106 was unconstitutional would remain in the case?

Judge Bell: It would be right in the case.

Mr. Moore: Well, Your Honor, the proper motion would not be to dismiss under Rule 12(b) for failure to state a claim, but rather to strike these particular named defendants.

Judge Bell: Well, I don't care how you get it done, as long as you get these men out of the case, because you are just dragging them along in the case. I tell you what you can do, Mr. Bloch, you just prepare an order and say these three men, Durham, Bacon and somebody else, named as representatives of the jurors are stricken by order of the court.

Mr. Bloch: Fouche, Durham and Bacon.

Judge Bell: All right, say they are stricken by order of the court, put three names on it, and we will sign it.

Mr. Bloch: Do you want to do that today?

Judge Bell: No, sir, you can send it to us.

Judge Scarlett: Well, why don't you get it done today?

Judge Bell: Well, we have got a typewriter problem. You can mail it to us. Now, that is all that is taken out of the case, that one thing.

[210] Mr. Bloch: I understand. I am going to suggest this somewhere between now and the 23rd, too—

Judge Bell: —All right.

Mr. Bloch: Whether the mal-function—well, not mal-function, but mal-apportionate of a grand jury is a question for any particular county in a state is a question within the jurisdiction of a three-judge court.

Judge Bell: Yes, sir, I believe it is. If the court, under this decision Justice Jackson, which we all know is one of the best judges we have ever had—

Mr. Bloch: Did you say Justice Jackson?

Judge Bell: Justice Jackson. It is a concurrent opinion that he wrote in the case in which he said he was getting tired of entertaining appeals on systematic exclusion in criminal cases. He says, what somebody ought to do is to proceed under, I think he said Section 1983, Civil Rights, and enjoin these mal-constituted juries. Now, he was a good judge and that was a sensible thing to do. Now, if we have

got jurisdiction to do that, then we have got jurisdiction to say that it is mal-constituted. We wouldn't make that retroactive, if we were to enter such an order, but they would just have to quit doing business in the future is all until they get it straighten out. It's no problem to straighten this out. These Jury Commissioners can get together and straighten it out.

Mr. Bloch: Well, of course, if you straighten it out [211] all these questions would fall by the wayside.

Judge Bell: That's right.

Mr. Bloch: But I am assuming, as a lawyer must assume, that it may not be straighten out, and then what I have got to do—

Judge Bell: —It won't be retroactive.

Mr. Bloch: Then that brings up the question: "When do I have to file my answer?"

Judge Bell: Well, I can't imagine anything that you haven't answered in these interrogatories, but you don't have to file your answer until we rule on the motions, so if you don't want to answer, you don't have to answer.

Mr. Bloch: O. K.

Judge Scarlett: That was what you were trying to find out, wasn't it?

Mr. Bloch: Yes, sir.

Judge Bell: You don't have to answer until we rule on all motions. All right.

Mr. Moore: May I make a suggestion about the hearing in Brunswick?

Judge Bell: What is it?

Mr. Moore: I would like for all parties to be required to notify each other within, say, five days of the hearing if they are going to put on evidence.

Judge Bell: I think that would be fair enough. That [212] will work both ways. I can't imagine what evidence would be, but if you are going to put on any, each side give the other side notice within five days prior to the hearing who you are going to put on. But don't come down there, Mr. Moore, if the Court wants to hear a witness, and say we can't hear one because you haven't had five days notice or something. These are sort of free wheeling hearings.

Mr. Moore: Yes sir.

Judge Bell: We get the evidence up as we need it.

Mr. Bloch: That is just like a pretrial ruling that a witness shall not be used on a trial unless the other side has five days notice.

Judge Bell: Right, but that doesn't apply to the court.

Mr. Moore: I would like to have copies of any records they file in court.

Judge Bell: Oh, you know they are going to give you notice of anything they file. No reason to worry about that. The hearing is adjourned until 9:30 on the 23rd of February at Brunswick, Georgia.

The Court: Now, is there anything else before we go?

Mr. Bloch: The Court has not ruled on the damage question?

Judge Bell: No. We haven't read Mr. Moore's brief.

Mr. Bloch: Oh, I see. So I have got to file a reply brief.

[213] Judge Bell: That's right. When we get through studying Mr. Moore's brief and get your reply brief on the question of ancillary damages—Now, you are going to find some cases where the Court has been awarding attorney fees and costs to various counties in some school cases in the Fourth Circuit, but so far as I know there has been no such rulings in the Fifth Circuit, but it has been done in the Fourth Circuit, but as I understand it he is not claiming any cost by way of Attorneys' fees. He is claiming a half a million dollars in what he calls ancillary damages which he says can be awarded without a jury trial.

Mr. Bloch: He has got a list of cases in page 35 and 6 of the brief which I have got to study.

Judge Bell: I would imagine that both of those cases were back in Star Chamber days in England which might have been some sense then, in which they said, I believe, "equity was as long as the Chancellor's foot."

Well, if there is nothing further, this case will stand in recess until February 23rd.

The Marshal: Take a recess until February 23rd.

**Transcript of Proceedings at Brunswick, Georgia
February 23, 1968**

[2] Judge Bell: All right, Gentlemen, we will take up the case of Calvin Turner Vs Fouche and others. We had another case set for today but we continued it at the request of the County Attorney of Burke County because he was in the Legislature and he couldn't get prepared and that case was continued several days ago, so this Turner case is the only matter we have. There were several motions that were undisposed of and in addition to that there has been other briefs filed on the same questions we had before except—well, we do have briefs on the damage question Mr. Bloch and Mr. Moore. There was speculation that we might have more evidence this morning, and each side was to give notice to the other side if they had additional testimony, and Mr. Bloch did write a letter that he would have some additional testimony, and we will hear from you, Mr. Bloch.

Mr. Bloch: If Your Honor please, I wrote the letter in conformity with the order of the court—may I stand here?

Judge Bell: Yes, sir.

Mr. Bloch: I wrote a letter in the thought that there might be some additional testimony needed but so far as the defendants are concerned I have here a Report to the Court to just what has happened factually since the Court recessed in Augusta. I would like to read it to the Court, while there are three copies.

[3] Judge Bell: It has something to do, no doubt, with the fact that the Court put you in charge of seeing whether you could work the problem out.

Mr. Bloch: Yes, sir. I think I can skip the first part of it because it is a part of the record at the conclusion of the hearing in Augusta.

Judge Bell: All right.

Mr. Bloch: On January 25th Circuit Judge Bell stated from the Bench—

Judge Bell: The Court wanted you to find out what the law was.

Mr. Bloch: Yes, sir, and the Court knows what that statement was and I will skip on over to page 3.

Judge Bell: All right.

Mr. Bloch: And start with the paragraph subsequently:

"On his own motion on the 26th day of January, 1968, the Honorable Robert L. Stephens, Judge of the Superior Court of Taliaferro County, Georgia, promulgated an order reading as follows:

Georgia, Taliaferro County. A Three Judge Court, Federal Tribunal, involving the County Board of Education and the Taliaferro County Board of Jury Commissioners, et al., on the 23rd day of January, 1968, having orally advised that the Traverse and Grand Jury Master List be revised in Taliaferro [4] County, Georgia, it is ordered as follows, to wit, that the Grand Jury of Taliaferro County, Georgia, drawn to serve at the regular February Term, 1968, of the Superior Court of said County be and they are hereby discharged from serving at said term of court, and the Sheriff of said County is ordered not

to serve them to appear at this term of court, it having been orally ordered by said Federal Court Tribunal that the Grand Jury Master List is improperly and unlawfully constituted; that the Jury Commissioners or Revisors of Taliaferro County, Georgia, revise both the grand and traverse jury list for said County to comply with the oral pronouncement of said Federal Court Tribunal, said list heretofore composed declared to be improperly and illegally composed. Said revision shall be made at the earliest and most convenient time.

It is ordered that this order be spread upon the minutes of the Court by the Clerk of said Superior Court.

This 26th day of January, 1968. Robert L. Stephens, Judge of the Superior Court, Taliaferro County, Georgia.

This order was filed in the office of the Clerk of the Superior Court of Taliaferro County on January 26th, 1968, and recorded in the Minutes of the Clerk of Superior Court in Book "L", Page 57, on that date. January 26th, 1968 was a Friday. Having heard of the order the Jury Commissioners consulted with their counsel in Macon practically simultaneously with its promulgation. As a matter of fact, it was the day before.

[5] The Jury Commissioners met beginning on a Monday following the order, to wit, January 29th, 1968. They had for their consideration a list of persons who were registered to vote in the last General Election. That list contained a total of 2,152 names. We are advised the Jury Commissioners con-

sidered each and every name in that list. When the Commissioners did not have any information with respect to a particular individual they asked other people in the community about him or her in particular when they did not know about persons of the Negro race they asked Negro people about them. In considering each and every name they eliminated the following numbers of names without regard to race for the following reasons:

Poor health and overage 374. Under 21 years of age 79. Dead 93. Persons who maintained Taliaferro County as a permanent place of residence but were most of the time away from the County 514. Persons who requested to be eliminated from consideration 48. Persons about whom information could not be obtained 225. Persons of both the White and Negro race who were rejected by the Jury Commissioners as not conforming to the statutory qualifications for juries, either because of their being unintelligent or because of their not being upright citizens 178. Names on the voters' list more than once 33. This left a total of 608 names. Since 608 names are more than the Jury Commissioners deemed to be needed in the traverse box they arranged these 608 names in alphabetical order [6] and took every other name on the list alternately and placed those names in the traverse jury list. This left a total of 304 names and only then did the Commissioners look to see how many of these 304 names were those of Negroes and how many of those were White. They determined that 113 were Negroes and 191 were White. Their next task was to select

not more than two-fifths of this traverse jury list for the grand jury list. They decided that the fairest system would be to draw names by lot. They drew a total of 121 names by lot and put these names on the grand jury list. Having done that they looked to see how many were the Negro race and how many the White race. They ascertained that 44 were the names of Negroes and 77 were the names of White. After the new Grand and Traverse Jury List had just been completed and after all the names had been put in their respective jury boxes a new grand jury was drawn by the Honorable Robert L. Stephens, Judge of the Superior Court of Taliaferro County, Georgia, in the manner provided by law. A total of 32 Grand Jurors were drawn by Judge Stephens, nine of whom were Negro and 23 Whites. That Grand Jury convened on Friday, February 16th, for the purpose of considering the regular business of the court and for the purpose of confirming or rejecting persons who had been selected by the Board of Education of Taliaferro County, Georgia, to succeed Horace E. Williams, Jr. whose term expires August 25th, 1968, Mr. Williams having resigned and to succeed Albert Drinkard, deceased, for a term to expire [7] August 23rd, 1969. Casper Evans, Sr., a Negro, had been chosen by the Board of Education to serve until the next meeting of the Grand Jury and Moore Pitman, of the White race, had been chosen by the Board of Education to succeed Albert Drinkard, deceased, for the term expiring August 23rd, 1969. These elections or selections or choices by the Board of Education were

confirmed by the Grand Jury, thus constituting a selection in accordance with the law. The Grand Jury actually serving consisted of 23 Grand Jurors, 17 of whom were whites and 6 Negroes.

Respectfully submitted.

And there is an appendix to it, Your Honor, a table, showing a summary of the same information contained in the body of the report.

Now, all of that, of course, as reported to the Court by me, is hearsay. It comes from my clients with the exception of the conference in Macon where they consulted with us as to what we thought were their duties under the law in accordance with the oral instructions of this Court. So, the reason I gave notice of perhaps having more testimony was that if there is any question, or if the Court wanted to propound any question to the Chairman of the Jury Commissioners or to the Vice Chairman of the Board of Education that they would be here.

Judge Bell: All right. The Court would like to have this summary in evidence, and the question would be "how would we get it in evidence? I suppose the Chairman of the Jury Commissioners [8] could testify as to the way it was done. Mr. Moore, I wonder if you would stipulate that this was the way it was done, with the right, of course, to cross examine.

Mr. Moore: Your Honor, we object to the report in toto on the ground, one, that it is hearsay. Two, that it is inadequate to secure the constitutional rights involved in the statutes, and, third, on the ground the report obviously shows how these statutes constitute provisions to create constitutional—

Judge Bell: —Well, I didn't ask you about that. Why don't you try to answer my question? I am trying to figure out how to get this in evidence.

Mr. Moore: Your Honor, I don't want to be bound by this Report, and I don't want to consent to what has been done in Taliaferro County by any of these whatsoever.

Judge Bell: I understand.

Mr. Moore: Your Honor, this is a slap in the face and is indicative of the fact that the system is totally and thoroughly rotten.

Judge Bell: What's wrong with the system? This is what we had the hearing about to try to get some relief in the situation.

Mr. Moore: Your Honor, we have argued that and have demonstrated in our brief, and I don't think I need to reiterate what is fundamentally right. It shows on the face of the Report what's wrong with the system.

Judge Bell: In other words, you are standing on your [9] attack on the Code Section, the constitutional provision?

Mr. Moore: Yes, sir.

Judge Bell: I understand that. You are not willing to shorten the proceedings by saying that if the Chairman of the Jury Commissioners testify he will testify to what is in this Report with you having the right to cross examine him.

Mr. Moore: Your Honor, I think we were under the impression that witnesses were going to be introduced here and whatever this Report is worth it could have been mailed to counsel and we could have

it prior to this hearing. It was not sub-
 us prior to this hearing. As a matter of
 nk it was conducted some time in January.

Bell: Well, they said they had a meeting
 y, something about the school board mem-
 did not know that they had appointed a
 mber of the School Board.

ore: I didn't get any information of that
 om the defendants.

Bell: You didn't know anything about it.

ore: I didn't know it from the defendants.

Bell: I say, did you know about it?

ore: I didn't really know about it.

Bell: Well, did Mr. Turner know about it?

ore: I will ask him.

Bell: All right, ask him.

. Moore: Your Honor, he didn't have any
 nouncement.

Bell: Oh, I know that. I know that he has
 any official announcement. But who would
 t an announcement? The Grand Jury usu-
 make any announcement until the end of

ore: He didn't know about it.

art: He didn't know about it.

ore: He didn't know about it. Period.

Bell: Well, Mr. Bloch, to get this into evi-
 will have to put the Jury Commissioners
 Gnd.

ch: All right, sir. Take the stand, Mr.

Bell: Let him be sworn and take the stand.

[11] C. A. GRIFFITH, called as a witness for the Defendant and after having been first duly sworn the truth, the whole truth and nothing but the truth to tell, testified as follows:

On Direct Examination by Mr. Bloch:

Q. Will you state your name, please? A. Clarence Griffith.

Q. Are you Chairman of the Jury Commissioners of Taliaferro County? A. Yes sir.

Q. Were you so, or have you been such for the past several months? A. Yes sir.

Judge Bell: Mr. Bloch, excuse me a minute. Do you have a copy of this order that Judge Stephens promulgated?

Mr. Bloch: Yes sir, a certified copy.

Judge Bell: Well, you are going to offer that into evidence?

Mr. Bloch: Yes sir.

Q. Did I give you last night a copy of the proposed report to the Court and counsel for the remaining defendants in this case? A. Yes sir.

Q. Have you read it over? [12] A. Yes sir.

Q. Do you have a copy of it before you? A. I do.

Q. On page three there is what purports to be an order of Judge Robert L. Stephens, Judge of the Superior Court of Taliaferro County, Georgia? A. Yes sir.

Q. Have you got a certified copy of that report with you—I mean order? A. Yes sir.

Q. Would you let me have it please? A. Yes sir.

Mr. Bloch: So I won't forget it, I tender a certified copy of the order marked Defendant's Exhibit No. 1.

Judge Bell: Mr. Moore, do you object to that?

Mr. Moore: No sir, I am not objecting. I just want to check something.

Judge Bell: Well, you are not objecting to it?

Mr. Moore: No sir.

Judge Bell: Do you call Defendant's Exhibit 1?

Mr. Bloch: Yes sir.

Judge Bell: All right, go ahead. That will be admitted.

Q. You had a chance last night to read over the balance of this report very carefully? A. Yes sir.

[13] Q. At the top of page 4 is a statement "having heard of the order", referring to the order of Judge Stephens, the Jury Commissioners consulted with their counsel in Macon practically simultaneously with the promulgation—as a matter of fact, that conference was on January 25th, on a Thursday, was it not? A. Yes sir.

Q. In our office in Macon? A. Yes sir.

Q. Now, with respect to all the rest of the report, are the statements of fact contained therein true? A. Yes sir.

Q. All right, sir.

Mr. Bloch: I offer this into evidence as Defendant's Exhibit No. 2.

Judge Bell: Wait a minute and let me glance over this. There is not anything in this report that this witness wouldn't know about. Now, let's see, we are down to the Jury Commissioners' meeting. Now, you don't know anything about drawing the grand jury? You wouldn't have anything to do with that?

The Witness: No sir. We made the list.

Judge Bell: You made the list?

The Witness: Yes sir.

Judge Bell: I know, but as I understand the Georgia law Judge Stephens goes in the court room and draws them out in public, [14] in the presence of the sheriff and clerk or anyone else who might be in the court room.

The Witness: Yes sir.

Judge Bell: That's on page 5. That is something that the witness wouldn't know about. Through the second paragraph on Page 5 he knows about it. Wait a minute, let me see.

Mr. Bloch: If we have to go into the proof of that Judge Stephens is here.

Judge Bell: All right.

Mr. Bloch: And the Chairman of the Board of Education is here, and we make proof of them for cross examination. Wouldn't that do it, Your Honor?

Judge Bell: I think it would. This witness can testify that those parts of the report that he was associated with, or had anything to do with, are true?

Mr. Bloch: Yes sir.

Judge Bell: All right, now, Mr. Moore, you can go ahead and cross examine him. That's down through the second paragraph on Page 5.

Mr. Moore: All right, Your Honor.

Cross Examination by Mr. Moore:

[15] Q. Did you consider any other source for names for Grand Jurors other than the Voter Registration List?

A. No, we did not.

Q. You did not go out in the community and determine whether or not there were persons of other identifiable groups who had not been included on the Grand Jury List?

A. No.

Q. Did you confine or limit your examination to the selection of persons eligible for jury service strictly to the Voter Registration List? A. We did, yes sir.

Q. Can you tell me the number of persons who were struck for poor health or over age of the Negro race? A. No, I could not.

Q. Did you make an examination or determination to find out the number of persons who were struck? A. No. Yes, I beg your pardon, 374.

Judge Bell: Just a minute, Mr. Moore. The Report says that they examined the names of every one on the Voters List of 2,152 people, so they had to make some investigation.

Mr. Moore: Yes sir, that is what I am trying to get at.

Judge Bell: If you examine every name on the list then you have investigated, or at least examined it, whatever that means.

Q. How did you determine that a particular name was [16] that of a person who was in poor health? A. Well, there were five other members of the Jury Commissioners. Taliaferro County is a small county. We also had three Negroes that we brought in to work with us one afternoon and from the information from the Jury Commissioners of those that were known to them and other people that we brought in we had a good idea of the people.

Q. When you say you brought in three Negroes, were they appointed Jury Commissioners? A. No, they were not appointed Jury Commissioners.

Q. They were not Jury Commissioners? A. No, they were not.

Q. They were brought in as advisors? A. They were asked to come in and help us to do what we thought were doing right.

Q. Now, what were the names of those Negroes that you brought in? A. Willie James Hughes.

Q. All right. A. Margie Hughes and John Short.

Q. What does Willie James Hughes do? A. What does he do?

Q. Right? A. Well, we selected Willie James Hughes because [17] he is an insurance agent and he goes all over the County and that is the reason we selected him.

Q. Does he have an office in the county? A. What?

Q. Does he have an insurance office in the county? A. I think he does.

Q. But you don't know, do you? A. I know that he does, yes sir.

Q. Margie Hughes, who is she? A. She is Willie James Hughes' daughter-in-law. She sells Avon Products and she also, in our opinion, had a knowledge of the people in the county due to the fact that she travelled about the county.

Q. How about James Short? A. James Short—

Judge Bell: —I thought you said John Short.

The Witness: John Shorter.

Judge Bell: Shorter or Short?

The Witness: S H O R T E R.

Q. What does he do? A. He is employed by the Board of Education, I believe.

Q. By whom on the Board of Education? A. Just employed by the Board of Education. I don't know his job.

[18] Q. You don't know whether he is employed by the Superintendent or not, do you? A. I don't know whether Superintendent hired him or not.

Q. Now, how old is Willie James Hughes? A. I do not know.

Q. Well, is he a young man, or an old man, or what? A. I would say that he is a middle age man.

Q. Did you get a chance to see him, look at him? A. Sure I see him. I see him every day.

Q. All right, how long have you known him? A. All of my life, 37 years.

Q. Pardon me?

Judge Bell: He said 37 years.

Q. Are you and he friends? A. Yes, we are friends.

Q. Is that true for his wife, Margie Hughes? A. Not his wife, his daughter-in-law. I have known her all of my life.

Q. Two of your friends? A. That's right.

Q. Are they considered Negroes that you can trust? A. Yes.

Judge Bell: What does that mean, Mr. Moore. I would [19] hope, if I were a Negro, that I could be trusted. What do you mean by that? What is the connotation of that statement?

Mr. Moore: By that, I mean, Your Honor, they are Negroes that white people know will not stir up any trouble.

Judge Bell: He was asking you something altogether different than what you thought he was asking you.

The Witness: I know Willie James Hughes. He is a respected Negro citizen in the Taliaferro County community. White people and colored people will testify to that.

Q. You have never known him to agitate for Civil Rights, have you? A. Have I ever known him to agitate?

Q. That's right? A. Not to my knowledge.

Q. The same thing is true as to his daughter-in-law, isn't it? A. I don't know of anybody that is agitating for Civil Rights.

Q. How about Calvin Turner, the Plaintiff in this case? A. I don't know that Calvin Turner is an agitator.

Q. But you know that he speaks out about his rights in Taliaferro County? A. That's his privilege.

[20] Q. And he exercises it, doesn't he? A. That's right.

Q. These Negroes that you had advising you about the Grand Jury, they don't exercise this privilege in the county do they? A. I think they do.

Q. Have you ever known them to take a stand? A. Yes.

Q. On what?

Judge Bell: Wait a minute. Just a minute. Do you think if they have foregone their right of free speech or freedom of religion? Just what do you have in mind, Mr. Moore. I don't understand this line of questioning.

Mr. Moore: Obviously, these Negroes are what they call "Uncle Toms."

Judge Bell: Well, why don't you prove that then? Put on a witness and prove that or let him say that and then we will decide whether or not we want to let that testimony in.

Mr. Moore: All right, Your Honor.

Judge Bell: If you want to ask this witness a question about somebody's reputation as to a law abiding citizen or an Uncle Tom then ask him. Don't have a lot of innuendos in your question and then come along later on with a brief and say that this man testified that this man said these people could be trusted and therefore they are a White [21] man's Negro or something like that. If you are going to ask this witness a question, you ask him so he will understand the question. I know what you are trying to do.

Mr. Moore: I can't ask him everything. I have to ask him—

The Court: —Well, the Court is pretty well aware of what you are aiming at.

Q. Do you know whether or not the Negroes you have just mentioned in your testimony have the reputation over the County of being Uncle Toms? A. No, they don't have the reputation of being Uncle Toms.

Q. So far as you know, is that right? A. As far as I know, no.

Q. How many Negroes were struck from the Voters Registration list? A. I don't know.

Q. You did nothing to find out the number you struck? A. I did not.

Q. How many Negroes were struck for over age? A. I do not know.

Q. Do you know of any one on the Jury Commission who would know? [22] A. No, no one on the Jury Commission knows.

Q. Was any investigation made by any of the Jury Commissioners that you know about to determine the number

of Negroes struck at the court house? A. There was no investigation made to my knowledge.

Q. Would the same be true for over age? A. Right.

Q. How many persons were struck as being under 21 years of age that were members of the Negro race? A. I do not know.

Q. How many of the persons struck as being dead were members of the Negro race? A. I do not know.

Q. You made no investigation to determine? A. I did not.

Q. How many of the persons who were struck who were listed on your report as persons who maintained Taliaferro County as a permanent place of residence but who were most of the time away from the county, and how many of them were Negroes? A. I do not know.

Q. Was any investigation made? A. No sir.

Q. How many of the persons who requested to be eliminated from consideration were Negroes? [23] A. One.

Judge Bell: Only one?

The Witness: Yes sir.

Q. How many persons with respect to the persons who requested to be eliminated from consideration—how did you go about determining that? A. Well, the word spreaded that we were revising the jury and people called in and asked me not to put their names on the jury list.

Judge Bell: This was just information that came to you?

The Witness: Yes sir, from various people. They called in and asked not to be put on the jury list.

Q. What method did you use to spread the information that you were revising the jury box? A. We did not use any method. We didn't have time to spread any information. We were just revising the jury and—

Judge Bell: By word of mouth would be the only way?

The Witness: That's right, yes sir.

Judge Bell: Now, you had five members of the Commission?

The Witness: Yes sir.

Judge Bell: And you had three Negro helpers, citizens, as consultants?

The Witness: Yes sir, they helped this one afternoon.

[24] Q. There was no public announcement that you were actually revising the jury list, was there? A. No sir.

Q. Did you consider the fact that you were not making a public announcement a discrete act? A. Did I consider it?

Q. Yes sir? A. No, we did not. We were under the impression that we had a job to do and wanted to do it, and we felt there would not be time to have an announcement due to the fact that it would just be put in the paper on Friday, would come out in the paper Friday, and for that reason we did not make a public announcement.

Judge Bell: Just a minute now. What came out in the paper?

The Witness: I said that it would have come out the following Friday, and we went to work on Mon-

day morning and notice would not have gotten out until Friday.

Judge Bell: Oh. I see.

Q. What was the date that you actually went to work?
A. Monday, January 29th, I believe it was.

Q. When did you complete the revision? A. We completed— Well, we actually didn't get [25] through with it until Tuesday.

Q. What was the date? A. The following Tuesday.

Q. Tuesday, February, what? A. February—well, I have forgotten. I would have to look it up on the calendar. It was the first Tuesday in February.

Q. You worked on how many days revising the jury list? A. We worked five days on revising the jury list.

Q. How many hours a day did you work? A. From 9:00 o'clock until 5:00 or 5:30 or 6:00 o'clock.

Q. You started at 9:00 o'clock in the morning and worked until 5:30 or 6:00 o'clock in the evening? A. Yes sir.

Q. How many days did the Negro revisors assist you?
A. Wednesday afternoon.

Q. Just Wednesday afternoon? A. Yes.

Q. They assisted you only one day? A. One afternoon.

Q. How many hours did they actually spend with the Commission? [26] A. Willie James and John Shorter helped us from 2:00 o'clock until, I believe, it was about 5:30 or 6:00 o'clock, and Margie came in, I believe, around 3:30, and worked until we quit about 5:30 or 6:00 o'clock.

Q. Now, you list 225 persons as being persons about whom information could not be obtained? Could you tell us how many of those persons were Negroes? A. I could not. I don't know.

Q. You don't know? A. No.

Q. Is it possible that all of them could be members of the Negro race? A. I couldn't say how many were Negroes.

Q. You wouldn't know? A. I wouldn't know. I don't have any idea.

Q. Could you tell us how many persons were listed as persons of both the White and Negro race who were rejected by the Jury Commissioners as not conforming to the statutory qualifications for jurors either because of being unintelligent or because they were not upright citizens? A. I would not know.

Q. Did you make any investigation to determine this? A. No, I did not.

[27] Q. Now, what did you mean by unintelligent? A. What did I mean by unintelligent?

Q. Yes sir? A. People who we thought would be capable of interpreting proceedings that would be going on in the court room.

Q. Let me ask the question again. A. All right.

Q. And be sure that you understand it? A. Well, what was your question?

Q. Mr. Griffith, what did you mean by using the word "unintelligent"? A. I thought you meant—

Judge Bell: I understood the answer clearly.

Mr. Moore: I did too, Your Honor, but he misunderstood my question.

The Witness: I misunderstood the question.

Q. Would you like for me to ask it again, Mr. Griffith? I simply asked—

Judge Bell: —Let me ask him. He means in applying the "unintelligent" in the selection of jurors,

what was your standard? What standard did you use?

The Witness: People that could not read nor write to our knowledge. I don't think we rejected anyone because you say they are unintelligent. I mean that—

[28] Judge Bell: You said awhile ago being able to understand proceedings in court.

The Witness: Yes sir, and we made the overall consideration of uprightness and people who were dependent and reliable and honest. We did not say pick out so and so and say they were unintelligent.

Judge Bell: In other words, you measured these people by the standard as to whether or not they were capable of serving on a jury and understand what the duty of a juror was?

The Witness: That's right, sir.

Q. You often use the phrase "upright citizens." Tell us what you mean by that? A. People who have a good reputation in the community, good character.

Q. Anything else? A. I can't think of anything else right now.

Judge Bell: Let me ask him some more questions about this 178. The word "upright" has always bothered me when the Jury Commissioners started making such a test applying the standard of "upright", you say it is good moral character, good reputation. I suppose that is one thing that it means. Did you eliminate anybody in this 178 that had a record as a criminal?

The Witness: Yes sir.

[29] Judge Bell: Some of them were in that category?

The Witness: Yes sir.

Judge Bell: Well, give us an example how you did it?

The Witness: I can give you an outline of what we went by, Judge.

Judge Bell: I wish you would do that?

The Witness: Number one, these are the things that we considered: Has he ever been convicted of a crime? If so, what offense? Was he convicted? Even if not so convicted, did the majority of the Commissioners deem him or her upright? What education has he. Do you consider him sufficiently intelligent to perform the duties of a grand and traverse juror. This number six, we did not consider it.

Judge Bell: What was six?

The Witness: Is it your opinion that he would act impartial in his conduct as a grand or traverse juror?

Judge Bell: You did not use that?

The Witness: No sir, we did not use that because we didn't think that we should judge whether a person would act impartial or not. Knowing the oath which grand jurors and traverse jurors must take under the law is it your opinion that he would abide by that oath in his conduct as a juror?

Judge Bell: You used the last two?

The Witness: Yes sir.

Judge Bell: Whether you thought he would abide by his [30] oath?

The Witness: Yes sir.

Judge Bell: All right.

Q. Mr. Griffith, what investigation did you make to determine whether a given juror had a criminal record? A. The Sheriff gave us that information and the Clerk of the Court. I forgot to mention that the Sheriff helped us and the Clerk of the Court helped us on this and also Mr. Taylor Lyles.

Q. Who is Mr. Taylor Lyles? A. He was acting as our clerk due to the fact that the Clerk, Mr. Golucke, was the Clerk of Court we went in one of the jury rooms upstairs and we asked Mr. Taylor Lyles—he came in, I believe it was on Wednesday, after we had gone through the whole list and he began to help us do the book work.

Q. Is Mr. Taylor Lyles a Negro or a White man? A. He is a White man.

Judge Bell: You say he served as Clerk of the Jury Commissioners?

The Witness: Yes sir.

Judge Bell: How much did the Clerk of the Court, Mr. Galucke, help you?

The Witness: Mr. Galucke came up one afternoon and helped us with the people as to crime and also the Sheriff one afternoon.

[31] *By Mr. Moore:*

Q. The Sheriff only came one afternoon? A. That's right, one afternoon, I believe.

Judge Bell: About how many people, if you know, did you eliminate because of their record, their criminal record?

The Witness: I have no knowledge of that.

Judge Bell: Was it more than one?

The Witness: Yes sir, there were more than one.

Judge Bell: But you don't know how many?

The Witness: No sir.

By Mr. Moore:

Q. You say the Sheriff only helped you one day, is that right? A. That's right.

Q. Was this after you had already gone through the Voters Registration List? A. Yes, it was after we had gone through the Voters List—that's right—in other words, after we had gone through the Voters List and had the people, the ones that we knew about, were put on a card, that is when we asked the Sheriff and other people to help us.

Judge Bell: And then after that you eliminated some?

The Witness: Yes sir. We eliminated some and we asked the three Negroes to help us to eliminate some and the Sheriff and the Clerk of the Court to help us.

[32] *By Mr. Moore:*

Q. For what crime did you eliminate prospective jurors?

A. What crimes?

Q. Yes sir, what types of crimes? A. I don't know definitely. I went by what the Sheriff told us and also the Clerk of the Court. They knew.

Q. Do you know whether any persons were eliminated for mere traffic violations alone? A. I would not know.

Q. You used the word in your testimony as to persons who were dependable. I believe that was the expression you used. What did you mean by that? A. Persons who were dependable?

Q. Yes sir? A. I don't remember using the word "dependable".

Q. When we were asking you about uprightness one of the phrases that you used was "if they were dependable"?

Judge Bell: I didn't hear that. I don't remember that.

The Witness: I may have said it.

Judge Bell: I don't remember him saying that. He may have said it.

The Witness: I think I said people who had a good reputation, people who were honest and of good character. Taliaferro County is not any big county and you know the [33] majority of the people there and the reputation they had.

Q. Did you understand my question about dependable?

Judge Bell: Well, he said he didn't use it. I don't know anything you can do about it, if he didn't use it.

Q. The 32 persons listed on the voters list more than once, how many of those were members of the Negro race? A. I don't know.

Q. Did you make any notation on the cards when you listed the names of the prospective jurors? A. Did I make any notation?

Q. Yes sir, on the cards? A. No sir.

Q. What information did you put on the card? A. We put on the cards the names. We numbered the cards 1, 2, 3, 4, 5 and 6 and so on, numbered them down the line. If that person was accepted number one was "No." Number 2 was unknown. Number 3 was "yes". Number 4, if we knew their education we put what we knew. If we didn't, we put "unknown". Number 5 would be "Yes." Number 6 would be "Yes." And number 7 would be "Yes."

Judge Bell: In giving these numbers you are referring to these questions you called out?

The Witness: Yes sir. And on the ones that were rejected it should have been; number one would have been "unknown." [34] Number 2 would have been "Unknown." Number 3 would have been "No." Number 4 would be "Unknown." Number 5 would be "No." Number 6 would be "No." and number 7 would be "No."

Judge Bell: Do you have a jury card with you, one of these cards you are speaking of?

The Witness: No sir, I don't.

By Mr. Moore:

Q. Now, Mr. Griffith, if the Jury Commissioners could answer those six questions that are on that list that you put in your inside pocket the Jury Commissioners would then know the race of the particular individual being considered, wouldn't they? A. We would know the race of the particular individual being considered but we didn't make a number and say "This number 24 is a Negro we have considered." We didn't do that, no.

Judge Morgan: Did you give consideration to race one way or the other?

The Witness: No sir. We did not. We thought we did a good job.

Judge Scarlett: How long did it take you to do this, a little over a week?

The Witness: Yes sir, a little over a week.

By Mr. Moore:

Q. It is not quite true, in your answer to Judge Morgan, that you did not give consideration to [35] race. The Judge directed you, didn't he, to bring the list in in conformity with the law and you had to consider race, didn't you?

A. Yes, we considered race after we were through, but I am talking about getting the names of people who we thought would be eligible to serve as jurors, and race wasn't considered then.

Q. When you had finished, did you make a decision as to whether you had a cross section of the community? A. We decided how we thought would be the best way to do it which is outlined in the way we did hear it.

Q. You considered the list that you came up with to be a representative cross section of the community?

Judge Bell: That would be a question of law. He might have some idea maybe that he thinks is a fair list, but the Court is going to rule on that as to whether or not it is. The law says it must be a fair cross section of the community.

Mr. Moore: But under the law they are to make that determination.

The Witness: We thought under the law we had to get a fair cross section of upright and intelligent people. There were people used in this thing here

that were more intelligent than others and vice versa. We haven't discriminated against anybody.

[36] Q. How many women are on the jury list? A. I do not know.

Q. What effort did you make to include women on the jury list? A. Their names were on the voters list and we thought they were qualified. In other words, the things we considered on this paper we put them on there.

Judge Bell: Did you take women off because they they were women?

A. No sir, we did not take women off because they were women.

Judge Bell: Did you take any Negro off because he was a Negro?

The Witness: No sir, we did not.

Judge Bell: Did you put any white man on because he was a white man?

The Witness: No sir.

Judge Bell: You don't have any Indians in Taliaferro County, do you?

The Witness: No sir.

Judge Bell: All right.

Q. Now with respect to the categories of persons excluded, listed on Page 4 and Page 5, Defendant's Exhibit No. 2, you cannot tell the Court how many of those persons of each category is a member of the female race? A. No sir.

[37] Judge Bell: Now, there is one thing I would like to do, Mr. Moore, and I know that you have this

information available, and that is I would like to know the percentage of eligible Negroes in Taliaferro County who are registered to vote, and the percentage of white people who are registered to vote! Did you put that in evidence before?

Mr. Moore: Yes sir, that was put in evidence before.

Judge Bell: What is that?

Judge Morgan: About 1100, as I recall.

Mr. Moore: I put in the rock bottom figure, Your Honor. 944 names and then we put in another figure from the Southern Regional Council that gave a total of 1100.

Judge Bell: 1100 is what the Southern Regional Council says. The Census has better information. I prefer to go by their information.

Mr. Moore: The 940 came from the survey that the plaintiffs have done in the county. We also put in the Census Report showing the Democratic characteristic of the County as an exhibit in the form of an affidavit. That's in evidence and is very descriptive and gives the percentages.

Judge Scarlett: Didn't you have the Census?

Mr. Moore: Yes sir.

Judge Bell: How many did they say? What percentage of the Negroes were registered, of the eligible Negroes that were registered? I am coming to the strong conclusion here that there [38] are more people registered to vote in Taliaferro County than they have living there, and the work that these Jury Commissioners have done shows that. A lot of these 514 people don't live there. They just come around there once in a while.

Judge Scarlett: On election day?

Judge Bell: I think so. How many people voted in the last General Election in Taliaferro County? Do you know that, Mr. Turner?

Mr. Turner: About 1300 or 1400 people, if I am correct, somewhere in that category.

Judge Bell: About half white and half Negro?

Mr. Turner: The majority of the registered voters in Taliaferro County are Negro.

Judge Bell: I know that, but I am talking about the number of people who voted. They found 33 people that were registered twice.

Mr. Turner: Judge, Your Honor, as the witness has stated Taliaferro County is a small county and from week to week you will have a chance to see everybody in the county, and the last election day I saw many white people that I had never seen before.

Judge Bell: Well, wait a minute. Let's don't get into that. You be sitting there thinking about the number of folks that voted. We want to get something in evidence about this. This [39] is just like most every voter list in the whole country. There are people on there who are dead and who have moved away. Nobody ever purges a voters' list. I want to find out some way this morning when the last time the voters' list has been purged and so forth and try to explain some of these large groups here, like 514 who don't reside in Taliaferro County permanently, and 225 they couldn't find out anything about, so we need some of this kind of information. We will let you testify a little later on. I am just

trying to raise this point in the courtroom now so people can be thinking about it.

Judge Scarlett: Couldn't we ask some of those people on the front row out there? They are from Taliaferro County and they will know perhaps.

Judge Bell: We will get some of them on the stand in a little bit.

Judge Morgan: Am I correct that at the last hearing there was some testimony to the effect that there were 1100 Negroes registered to vote and approximately a 1000 whites.

Mr. Bloch: In the prior record, a witness, and I think it was the Plaintiff, testified that there are 949 Negroes in Taliaferro County eligible to vote, and Judge Bell says "949." The witness says "949", and Judge Bell asked how many voted in the last election, just out of curiosity" and the witness answered "As far as I was able to determine there were about 100 Negroes who did not vote." That's on Page 131 of the record.

[40] Judge Bell: All right. Now, at that time, Mr. Moore, were we talking about Negroes actually registered?

Mr. Moore: These were actual registered Negro voters.

Judge Scarlett: Do you have the number of white people that voted, Charlie? Do you have a list of the white?

Mr. Bloch: Let me see if I can find that. There is some more on that page. Judge Morgan asked at the bottom of the page.

"You read that against the voters' list, checked that against the voters' list?"

The witness said: "We did the best we could but that was not an adequate way to come up with an adequate figure."

Judge Bell Said: "Because a lot of those folks had left the County?"

The witness said: "Well, I see some people on the voting list in my family who have been dead and buried for ten years."

Judge Bell: What the Jury Commissioners have done shows all of this to be true, that it has not been purged.

Mr. Moore: Your Honor, at that point, what the witness is doing is reconciling the difference between the survey they made and the figures that we put into evidence under the Southern Regional Council Report, and I asked him how does he reconcile that difference, and that was his testimony.

[41] Judge Bell: All right, lets get on with the cross examination of this witness. I raised this question because we do need to get something in the record on it to explain about these people they couldn't locate. What happened to them.

By Mr. Moore:

Q. Now, Mr. Griffith, of the 304 persons on the Traverse Jury List, how many of them are women? A. How many of them are women?

Q. Yes sir? A. I do not know.

Q. And you would not know how many are Negroes? A. No, I would not.

Q. With respect to the 121 names on the Grand Jury List, can you tell the Court how many are women? A. No, I cannot.

Q. And that would be true if I were to ask you how many Negroes were on the Grand Jury list? A. That's right.

Judge Bell: Now, just one second there. Do you have a list of the jurors with you?

The Witness: Yes, I do.

Judge Bell: After you get off the stand, can you sit down and estimate how many women there are on the list? We might just as well get this in the record now?

The Witness: How many Negro women?

[42] Judge Bell: No, just women. Period.

The Witness: On the Grand Jury List?

Judge Bell: The Traverse Jury and the Grand Jury.

The Witness: Yes sir. I will be glad to do it now.

Judge Bell: No, you can do it a little later on, try to estimate how many women are on the list. You don't have to separate them by race.

Mr. Moore: We would like for him to separate them by race.

Judge Bell: No. You don't have any law on earth, as I know of, where you have to have so many Negro women and so many White women on the jury list. It is just women. Period. And that is not a settled constitutional right yet.

Mr. Moore: I agree with that, Your Honor.

Judge Bell: All right.

Judge Scarlett: Did you also get the number of White people on the list that voted in the last election?

The Witness: I do not have the voters' list with me.

Mr. Moore: I would like to be heard a ~~minute~~, Your Honor.

Judge Bell: All right, what is it?

Mr. Moore: The significance of determining the number of Negro women is that the Negro women is the largest identifiable group in the county. Not only are they a sexual group but they are a racial group also.

[43] Judge Bell: You mean there are more Negro women than there are Negro men?

Mr. Moore: Yes sir. I think there are more Negro women in the County than anybody, or any single segment, more Negro women than White men, more Negro women than White women.

Judge Bell: You want to show that they did not take very many out of this one large group? That is the idea of the thing, I guess.

Mr. Moore: Yes sir, and the Democratic characteristics of the county are developed and shown fully in our affidavit.

Judge Bell: Well, if Mr. Griffith knows, if he can look on there and tell, he can give that information. If he says that he doesn't know, he just doesn't know.

Judge Scarlett: Well, what are you interested in, the number of White and Colored women who are registered, or just the Colored women?

Mr. Moore: We would like to know both, Your Honor.

Judge Scarlett: All right.

Mr. Bloch: Your Honor, the complaint alleges in paragraph 13, 14 and 16—I don't know whether this

goes directly to Judge Scarlett's question or not—but here are the allegations in paragraph 13: "There are 2097 Negro residents in Taliaferro County, Georgia, of whom 979 are over the age of 21, including 435 males and 544 females.

[44] Paragraph Fourteen: "There are 1273 White persons resident in Taliaferro County, of whom 877 are over the age of 21, including 395 males and 482 females."

Then there are 1172 members of the Negro race enrolled as registered voters in Taliaferro County, and hence eligible for service on both the grand jury and traverse jury of said county."

That is the allegation and Judge Bell called attention to the fact, to the questioning when Mr. Owens objected to the witness' statement that there weren't but 949—and then what did he want to object for, that it was in his favor. There was 949 in proof and 1172 in the allegation and—

Judge Bell: —Lost over 200.

Mr. Bloch: Sir?

Judge Bell: Lost over 200. You alleged that you had 1172 registered Negro voters and your proof was that you had 949, so you lost over 200.

Mr. Moore: Judge, we were anxious to prove two things. Actually, there were 940 and we had evidence to back that up, and we had SRC figures, and we were trying to reconcile them and present a true picture.

Judge Scarlett: In the petition—Judge Bell just said that.

Mr. Moore: We were able to prove those figures.

[45] Judge Bell: No. Something has happened now. There are some missing people, and that is what we are trying to find out about now.

Mr. Moore: Your Honor, if the Court accepts the SRC, we have proved it.

Judge Bell: We are not going to accept SRC figures.

Mr. Moore: We put in evidence—

Judge Bell: —You know we are not going to accept some private figure. We have got to go by the Census and sworn testimony.

Mr. Moore: Then we put in sworn testimony of what the actual figures are.

Judge Bell: You see, we don't know, I don't guess we know, how many White voters there are supposed to be in Taliaferro County because nobody has testified about that, as I know of. There are probably two or three hundred missing on that, I imagine.

Mr. Moore: Your Honor, we put in the SRC figures also to show the White people, all of them. The significance of the figures, Your Honor, are that the figures show that both groups, Negro and White, are registered in excess of 100 percent, but we do have some figures at the end from which some judgment could be made. Now, this was the very best that we could do.

Judge Bell: Now, what do the SRC figures show as compared to Mr. Turner's testimony that there are 949 Negroes. Let's test the figures right now.

[46] Mr. Moore: Just one second.

Judge Scarlett: What connection has the Census with this SRC?

Mr. Moore: It shows the number of people in the county over the age—

Judge Bell: —That could register, if they wanted to.

Judge Scarlett: I see.

Judge Bell: I might say that this is not any peculiarity of Taliaferro County—this is true in many counties all over the country, there are more people registered than live there. People move away from a place and they keep registered there, and they go on to Atlanta or somewhere and they register there too. It doesn't mean that they vote in both places.

Mr. Moore: Your Honor, according to the SRC figures in Taliaferro County as of the summer of 1966, there were White voting age population of 917, Negro voting age population 1173. White registered 1052. The figure you asked for, Mr. Bloch, Negro voting age population 1073. Negro registered 1165. Per cent White registered 100 plus, per cent Negro registered 100 plus. These are the figures as of September 1966 which comes from various sources.

Judge Bell: The hundred percent White race, what?

Mr. Moore: Over one hundred percent.

Judge Bell: What?

Mr. Moore: Over one hundred per cent.

[47] Judge Bell: On the White race?

Mr. Moore: One hundred per cent, plus.

Judge Bell: Now, that document there says there were 1165 Negroes registered to vote in Taliaferro County.

Mr. Moore: Yes sir.

Judge Bell: Mr. Turner testified that as near as he could find there were 949.

Mr. Moore: Yes sir.

Judge Bell: We didn't have any testimony about how many Whites could be found, did we?

Mr. Moore: Yes sir.

Judge Bell: All right, the significance of these figures is that they tie in very closely with the fact that these jury commissioners could not locate 225 people and they found 514 who were away from the county the most of the time.

Mr. Moore: Yes sir.

Judge Bell: I don't know how that would break between White and Negro. It ties in very closely though.

Mr. Moore: Your Honor, Mr. Turner testified that he went from door to door and made a survey and actually had a physical contact with people they put in their files as people registered to vote, which I submit is a reliable way to do it.

Judge Bell: All right.

Mr. Bloch: Your Honor, I think counsel covered what [48] I was going to call attention to. The 16th paragraph of the complaint says there are 1053 White persons enrolled as registered voters in Taliaferro County, Georgia, and hence eligible for service on the Grand and Traverse Juries in said county.

Now, Your Honors, I call attention to something that is perfectly apparent to me with respect to both of these paragraphs, most of the number of the Negro race enrolled and the White race en-

rolled they wind up with the sentence "and hence eligible for service on the Grand and Traverse Juries of said county."

We shall urge at the proper time that the mere fact they are on the jury list—of the registered voters' list—doesn't make them eligible to vote unless in the opinion of the Jury Commissioners they conform to the law and—

Judge Bell: —I think we can construe that allegation that they are eligible to be considered for jury service.

Mr. Moore: Your Honor, I think that this type of confusion and the difficulty of really nailing it to the wall as a matter of proof demonstrates the inadequacy of the voters registration list.

Judge Bell: Well, it just happens that I have seen a good many jury lists and these Jury Commissioners have gone about this in about an efficient way, according to what he has testified, as any I have seen. It is a far better system than, [49] say, the key man system the federal courts use in many places, except in the Fifth Circuit. You are aware of the key man system being used everywhere else except the Fifth Circuit, where one man can go out and select who he wants to be on the jury. Now, these people took the voters list, and assuming that they did not take anybody off the regular list—on proof of that—they ended up with 608 names and they said "we will take every other name", and it resulted in 113 Negroes and 191 Whites. If you had a perfect jury list and you said we are going to evade the laws of the United States and do it by race. Period. Going to have the same per-

centage, how would you come out? It would be half and half, I guess.

Mr. Moore: The Negroes would be in the majority on the jury list.

Judge Bell: Well, I don't know that, whether they would be in the majority or not. We wouldn't know that until we could find out how many of these missing people were Negroes and how many were Whites. They would be somewhere near even, I will say that.

Judge Scarlett: Well, don't you all think you are overlooking one fact, and that is maybe a lot of these white ladies did not want to go to the polls, scared to go down there, maybe. Now, that could have something to do with those 200 people who didn't vote.

Judge Bell: They can't find them.

[50] Judge Scarlett: Can't find them?

Judge Bell: No.

The Witness: Judge, the information you asked me to look up—

Judge Bell: —Yes, that's about the females?

The Witness: Yes sir.

Judge Bell: He is going to tell us about the females. All right.

The Witness: There are 149 women on the Traverse Jury, and there are 37 women on the Grand Jury.

Judge Bell: 149 women on the Traverse Jury?

The Witness: Yes sir, and 37 on the Grand Jury.

Judge Bell: 37 women on the Grand Jury. That is 37 out of a total of 111 people.

Mr. Moore: 121.

Judge Bell: 121. And 37 of them are women. All right, now Mr. Moore asked you how many of those were Negro women.

The Witness: Do you want me to check that.

Judge Bell: Look at the names and make the best estimate you can.

The Witness: Of the Grand Jury?

Mr. Moore: I think the list should go into evidence.

Judge Bell: How is that?

Mr. Moore: I think the list should go into evidence since we put the prior jury list in evidence.

[51] Judge Bell: Well, he will be glad to put that in, I imagine.

Mr. Bloch: Yes sir, we will put it in evidence.

Judge Bell: There is no problem about that.

Mr. Bloch: Do you want a copy of that put into evidence?

Judge Bell: Yes sir.

Mr. Bloch: Yes sir, certainly, we will put it in.

Judge Bell: All right, anything else for this witness?

Mr. Moore: I want to ask him a couple more questions.

Judge Bell: Well, I was going to let him get off the stand and set down somewhere and figure up how many of the women, or Negro women, from his best estimate are on the list. There is no use taking up time having him do that on the stand. Finish up with him so he can go down and do that and then he can come back and testify to that.

By Mr. Moore:

Q. Can you tell the Court what economical bracket these 304 jurors are in? A. What economical bracket?

Q. Yes? A. I would say all kind.

Q. Are they all property owners? A. I do not know.

Judge Bell: He is asking this question, Mr. Griffith, as if you were in Pittsburgh, Pennsylvania, or somewhere where [52] they have got a lot of blue collar workers.

The Witness: We have one or two blue collar workers. There are farmers on here, preachers on here, maids, and insurance men and people who don't do nothing.

Judge Bell: All walks of life?

The Witness: All walks of life.

Judge Bell: Do you have any strong labor movement in Taliaferro County?

The Witness: No sir, we do not.

Judge Bell: Do you have any Unions at all that you know of?

The Witness: No sir, not that I know of.

Judge Bell: So, you wouldn't need to know about that, Mr. Moore, about whether they have got anybody from the Labor Unions or not.

Q. Let me ask you this: Do you know how many of these people are property owners? A. No, I do not.

Q. Did you make an investigation to determine that?
A. No, I did not.

Judge Morgan: Did you attempt to use whether or not they were property owners in making up your list? Did you give that any consideration?

The Witness: No sir.

[53] Judge Bell: All right, you may go down.

The Witness: Do you want me to figure this out?

Judge Bell: Yes, figure out how many of the women are Negro women, if you can. Go out there and sit down somewhere and do that for us. Just an estimate.

Mr. Bloch: Call Judge Stephens.

Mr. Moore: If you are going to call other non-party witnesses, they should be excluded from the court room.

Mr. Bloch: Judge Stephens is Judge of the Superior Court, Your Honor.

Judge Bell: You haven't asked for the rule, Mr. Moore.

Mr. Moore: I never ask for the rule against a Judge, but I am saying that if there are other non-party witnesses then I will expect them to be excluded from the court room.

Mr. Bloch: Mrs. Williams, she may have to go on the stand.

Judge Bell: Somebody has got to tell about selecting these two Members of the Board of Education.

Mr. Bloch: I didn't know, Your Honor, that we were going to get into such technicalities, but we have here certified copies, or rather the original and copies of the Minutes of the Board of Education that shows the selection of the two members.

Judge Bell: And do you have a Resolution of some sort or some sort of a certified copy of the Minutes of the Grand Jury?

Mr. Bloch: No sir, I do not. That was what I was coming [54] to, and I was going to ask permission—it has just occurred to me since we started into this that the highest and best evidence of the action of the Grand Jury would be a certified copy of its report to the court, or filed with the court, if there is one. I can't say whether there is or not, but I ask permission to file a certified copy of the report of the Grand Jury—

Judge Stephens: If you will pardon me. You mean the presentments that the Grand Jury makes?

Judge Bell: Yes sir?

Judge Stephens: Yes sir, they are. Of course, reduced to writing, presented in open court, and are put upon the Minutes of the Court and subsequently, generally speaking, they are published. I order that they be published in the local paper which will be done, if it hasn't already been done.

Judge Bell: The Court will grant you leave to file a certified copy of the presentments that reflects the election of some of the school board, members of the school board, these two mentioned in this report.

Mr. Bloch: Within ten days?

Judge Bell: Within ten days will be all right.

Judge Scarlett: Well, do you have any official notice of the election of these two members of the Board of Education? I mean the Judge.

Judge Stephens: No sir. The only way it would reach [55] me, Judge—

Judge Scarlett: —Would be from the presentments?

Judge Stephens: Yes sir.

Judge Scarlett: And then do you swear those Members of the Board of Education into office?

Judge Stephens: No sir. I am not sure of that formality, but the School Board would in some way take care of that.

Judge Scarlett: Well, that's all right. I just wanted to find out how it was handled.

Mr. Bloch: That is not what I was going to prove by the Judge. I was going to prove by Judge Stephens—

Judge Bell: —About drawing the Grand Jury?

Mr. Bloch: No sir. It was paragraph on Page 5 beginning after the "new traverse list"—

Judge Bell: —Now, wait just a minute. If you put these presentments in, if you send that in later, Judge Stephens is going to testify, but you need somebody to testify about the electing of these two men, the selection by the Board of Education. Is that going to be Mrs. Williams or somebody in the Board of Education?

Mr. Bloch: It may be Mrs. Williams or Mrs. Fambrough, the Chairman, or it may be the Minutes. We have them all here.

Judge Bell: Well, Mr. Moore has asked for the rule. Of course we could rule that he can't get the rule at this time [56] because he didn't ask for it in the beginning.

Judge Scarlett: Wasn't he—

Mr. Bloch: —There are—

Judge Scarlett: —Just one minute, Mr. Bloch. Wasn't he required, under the order that we perfected that he was to serve opposing counsel a certain number of days before the hearing of any witnesses or evidence that he was going to produce?

Mr. Bloch: What was said was this—

Judge Bell: —Each side was suppose to do that.

Mr. Bloch: Page 211 of the record Mr. Moore said: "I would like for all parties to be required to notify each other within, say, five days of the hearing if they are going to put on evidence."

Some week or ten days ago we notified Mr. Moore by letter that we would put up some or all of the Board of Education and Jury Commissioners, and I think that complies with it.

Judge Scarlett: Well, did you get anything from him about that?

Mr. Bloch: No sir, I got nothing from him.

Judge Bell: Mr. Moore is not trying to put on any evidence.

Judge Scarlett: He is getting ready to.

Judge Bell: No, he has asked for the rule to put these witnesses out of the court room. That is all he is talking [57] about now.

Judge Scarlett: Well, I have had that up every-time.

Judge Bell: Well, do you insist on that?

Mr. Moore: No sir.

Judge Bell: All right, then that ends that.

Mr. Bloch: Take the stand Judge Stephens.

Mr. Moore: I don't insist on the Judge testifying.

Judge Bell: Well, that's all right about that. Let somebody administer the oath to you, Judge Stephens. Mr. Moore said that he doesn't insist on you testifying, but I want to ask you a question.

Judge Stephens: All right, sir.

JUDGE R. L. STEPHENS, After having been first duly sworn the truth, the whole truth and nothing but the truth to tell, testified as follows:

By Judge Bell: I want to get it in the record here how you select the Grand Jury, a traverse jury and a grand jury in the superior court. Now, understand in this case all that we are concerned with is the grand jury, the new grand jury that was chosen. We would like for you to tell us how you do both of them. We would like to know whether it is in boxes and whether it is open in the court room and who was present when you draw the jury and that sort of thing. Suppose you examine [58] him along that line Mr. Bloch.

Mr. Bloch: That's a good question.

Direct Examination by Mr. Bloch:

Q. You are Judge Robert L. Stephens? A. Yes sir.

Q. Your residence is in Thomson? A. Yes sir.

Q. In McDuffie County? A. Yes sir.

Q. You are a superior court Judge in Georgia? A. Yes sir.

Q. Elected by the people? A. Yes sir.

Q. What Circuit is that? A. Toombs Circuit.

Q. Consisting of what counties? A. Taliaferro, Warren, Glascock, Wilkes, Lincoln and McDuffie.

Q. In each of those counties are you charged with the duty under the law of drawing a grand jury and trial jury in each of the counties? [59] A. Yes sir, I am.

Q. In your own language, would you state to the Court what the procedure is in each of those counties in drawing the traverse juries and the grand juries? A. Yes sir. In each of the counties it is basically the same. Of course, by operation of law one term of the court, as you would know, last until five days immediately before the next term of court, therefore when I open the court on the first day of the term in each of these counties I keep it open until five days before the convening of the next court.

All right, now, with particular reference to the grand jury here mentioned, I went to Taliaferro County. The term of court was still in existence. I had the Clerk of the Court to bring the jury box upstairs. The Sheriff was present. Of course, the Clerk was ever present and listing the names as I drew them. The master key is under my hand and seal. This envelope, I tear it open. First, before I commence any procedure in any wise, that is, drawing the jury or otherwise, I have the court opened. When the court is officially opened I go into the jury box, and as you gentlemen certainly must know, it is like drawing, if you please, from a lottery. You draw from box number one and put the name called into box number two until you have a sufficient number of jurors.

Judge Bell: Now, is there a separate box for grand jurors?

[60] The Witness: Yes sir.

Judge Bell: You take two fifths of the traverse jury list and put those names in a separate box?

The Witness: Yes sir.

Judge Bell: In other words, you have two boxes?

The Witness: Yes sir.

Judge Bell: One for the grand jurors and one for the traverse jurors?

The Witness: Yes sir. That's correct. But that is done by the Board of Jury Commissioners, together with their clerk. That is, in composing these boxes.

Judge Bell: I mean by that, just physically, when you get there in the court room—

The Witness: —Separate boxes altogether.

Judge Bell: All right, sir.

The Witness: Yes sir.

Judge Bell: Now, tell us about drawing this particular grand jury. You say you were in the court room?

The Witness: Yes sir.

Judge Bell: You call the names out yourself?

The Witness: Yes sir. That is exactly what occurred.

Judge Bell: But you call the names out of the box yourself?

The Witness: Yes sir, always without exception.

Judge Bell: And in this case that was done?

[61] The Witness: It was done exactly in that order, yes sir. After court was duly opened on the occasion, in fact, it was already in session by virtue of not having been adjourned.

Judge Bell: Now, you drew 32 names of Grand Jurors to serve on this Grand Jury that we are concerned with, and nine of those were Negro and 23 were White. Now, who cut it down to 23? Can the Grand Jury be more than 23?

The Witness: No sir. Now, the law provides that we can draw a maximum of 35 names, but that the Grand Jury shall at no time be composed of more than 23, nor less than 16. It was changed last year from 18 to 16 as a minimum, and of course it was so constituted at all times.

Judge Bell: Now, who was in charge of eliminating these extra jurors?

The Witness: What happens, if anyone is over age, or has a legal excuse, if he is excused that list still remains numerically the same, and if one has been excused, of course, his name is not called, but numerically they are taken—the next number that follows until you get that sufficiency. Now, any remaining, of course, they would be subject to call if there would be an insufficiency to serve of those who preceded on the list.

Judge Bell: Well, suppose you had more than you needed?

The Witness: Then they would not be called to serve [62] at that given time, but in the future and during the term if for any reason I had to have more I might call them back and have them sworn accordingly.

Judge Bell: Well, hypothetically, suppose you had five more grand jurors than you needed would you take the last five drawn and eliminate them?

The Witness: Yes sir.

Judge Bell: That's the way you would do it?

The Witness: That's right.

Judge Bell: There wouldn't be any discretion in it?

The Witness: Well, I don't know of any provision of law that would not permit me to exercise a discretion in getting those that were drawn but I don't do it. I start at the top and take them down until I get the maximum number.

Judge Bell: Then those that you don't need you just leave them off the bottom?

The Witness: That's right.

Judge Scarlett: Well, now, if we have more on the Grand Jury in our court than we need we transfer them to the petty jury.

The Witness: Yes sir.

Judge Morgan: If they consent.

Judge Bell: Now, if some one wanted to be excused, do they clear that with the Clerk of the Court?

[63] The Witness: Well, to be perfectly frank, Judge, in the state courts, in our Circuit, that is one of the biggest things that we have to undergo.

Judge Bell: Those who don't want to serve?

The Witness: Who don't want to serve, or for other reasons want to get off. Frequently, as to the traverse jurors, we have to draw a great number because we sometimes can anticipate this sort of thing.

Judge Bell: All right.

The Witness: But even so with the traverse jury list we take them one right on through and their names remain in that order except those who have been excused.

Judge Bell: Now, you drew 32 names here, 9 Negroes and 23 Whites, and in the final outcome only 23 served and after it had been reduced it was

17 Whites and six Negroes, how did that come about? Do you know?

The Witness: Not really unless some were in the excess number and not needed at the end of the list. Now, that might have occurred, but to be perfectly frank that must be correct, but I was of the opinion that more served than that, but that must be correct. I am sure you have checked these figures out.

Mr. Bloch: There couldn't but 23 serve.

The Witness: Oh, I understand that. Frankly, I believe there were seven Negroes. I could be wrong in that. I somehow believe there were seven but I could be mistaken about that. I [64] could be mistaken about that.

Mr. Bloch: We checked on that.

The Witness: Yes sir.

Judge Bell: Now, who would know that?

The Witness: Now, as I drew these names, I would not know whether they were Negro or White.

Mr. Bloch: Wouldn't anybody know about that.

Judge Bell: I know, but I was wondering how you got it cut down to 23. The complaint that the plaintiffs have is that there is so much discretion in the system that it is very easy for somebody along the line to say "lets whack out some Negroes here."

The Witness: No sir.

Judge Bell: I just wanted to find out how that works.

The Witness: No sir, that is not done. If they are drawn, if they are on that list they are expected to serve just as the next man.

Judge Scarlett: Don't you, under the law, have a maximum of 23 jurors?

The Witness: A maximum of 23 and a minimum of 16.

Judge Scarlett: That was what I was trying to get at.

The Witness: Yes sir.

Judge Bell: You think there were seven Negroes and not six on there?

The Witness: I am pretty confident of that, Judge.

[65] Judge Bell: All right.

Mr. Bloch: You will notice that when it was cut from 32 to 23, at the time it was 32, the proportion was 23 and nine. And if it was cut to 23 then the proportion was 17 and six, as stated in the report.

Judge Bell: Yes, but you are not suppose to go by proportions. You are suppose to let the chips fall where they may.

Mr. Bloch: Then what you want to know is how it got cut from 32 to 23?

Judge Bell: I want to know how the chips fall.

The Witness: We just didn't reach that number, if you please.

Mr. Bloch: You excused the others.

Judge Scarlett: It would be 23 and seven that you have now, don't you?

Judge Bell: They had 32 to begin with and they end up with 23.

Mr. Bloch: Who excused them from 32 that brought it down to 23?

Judge Morgan: I assume the Judge did.

The Witness: I would do that. Now, bear in mind this, if you please, if somebody was sick that would have to be passed to me by somebody.

[66] Judge Bell: By the Clerk of the Court?

The Witness: Yes sir, he would be advised of it, generally, and quite frequently, even so, I don't remember in particularly with reference to this particular grand jury, but I have doctors' certificates about somebody, or some written matter telling me of their excuse, and sometimes they will telephone and sometimes they will write me, and as I say it is really one of the biggest nuisances that I have.

Mr. Bloch: Is anybody permitted to excuse grand jurors that have been drawn by you?

The Witness: No sir.

Mr. Bloch: Except you?

The Witness: No sir.

Judge Bell: All right, I think that covers that point.

The Witness: Now, if anybody tells anyone—let me clarify that. As an example, if one of the officers serving a juror, if that juror gives the officer an excuse, or if he passes an excuse to the Clerk then I pass on it later whether he will or will not be excused.

Mr. Bloch: You have the final say on that?

The Witness: Oh, yes, I keep a master list each time I draw them. I have a copy submitted to me and I check my list, and I am very definite, certain and positive about who is on that list and who has been excused.

Judge Bell: All right. But you would not have any [67] way of knowing who was a Negro or who was White?

The Witness: Oh, no sir.

Judge Bell: All right.

The Witness: Now, I possibly would have more knowledge in my home county, but up there I would have no way on earth of knowing about that.

Judge Bell: All right.

Cross Examination by Mr. Moore:

Q. Judge Stephens, are you familiar with the Report that has been prepared by counsel for the defendants?

A. I was familiar with it as it was commenced to be read here. Mr. Watson, back there, I believe had one at the moment and I looked at it as it was read.

Q. Do you know when they began the revision about which you testified? A. It was immediately after the 23rd of January. I attended that first trial down here, so that, to be perfectly frank, know what possibly I might have to do in the matter of complying with whatever was specified.

Q. When did you draw the grand jury that actually appeared? [68] A. I believe it was eight days before the 16th because I was quite concerned. I was involved in other places and I only had that length of time in which the Sheriff would have to serve those required to appear as grand jurors, and there were many other things also to be considered by this grand jury. I had one coming up ordinarily on the 26th but I had to have a special term on the 16th, seeking at that special term to do everything that we would on the 26th. Frankly, trusting, hoping and praying that we could comply, in truth, with all the laws and then not have to come back on the 26th and create that expense for Taliaferro County to have to pay. It was

really a rushed type proposition within eight days. I do remember the eight day situation.

Q. And this was a special revision of the Grand and Traverse Jury in Taliaferro County? A. Oh, yes, it would not have been due at this time. It would not have been due at this time, I believe the next revision—I will have to check the records—would either be in August or August of next year. I am not sure.

Judge Morgan: Every two years?

The Witness: Every two years. And now possibly each year, unless the Judge orders every two years.

Judge Bell: What about that, Mr. Moore? Do you know anything about that?

Mr. Moore: Every two years, and then by special order [69] every three years.

The Witness: It has been changed, although we can do it as often as need be, frankly.

Judge Bell: All right.

Q. Do you anticipate a revision in August of 1968? A. To be perfectly frank, the last, or rather the 30th of March of last year the Legislature enacted this law, and it was signed on the 30th of March, last year, and if there of necessity to be a revision in all of these counties I had it done. If one was recently, if I could avoid it, I think I would have avoided it because I think it would be a repetitious and needless thing to be done this year. Now, if I run out of names it possibly might be different.

Judge Bell: Let me ask a question here. This is something else. You promulgated this order of January 26th requiring this revision?

The Witness: Yes sir.

Judge Bell: And it is your testimony that you did that in pursuant to the fact that this court had ordered—

The Witness: —an oral pronouncement, I would say.

Judge Bell: On the grounds that the jury list in Taliaferro County was—I think we call it mal-constituted?

The Witness: Yes sir.

Judge Bell: The same thing as systematic exclusion?

[70] The Witness: Yes sir.

Judge Bell: That we were talking about, based on race.

The Witness: Yes sir.

Q. Judge Stephens, did you give the Jury Commissioners any instructions as to how they were to proceed to correct the mal-constitution of the grand jury? A. No. I don't know that I gave them any specific instructions except under the law. I met with them following March of last year, and I believe then I took a copy of the Act that had just been signed and sent to me by the Secretary of State so that they would be sure then of the new laws and what should take place. Of course, I explained to them, if you please, the necessity and urgency of a revision at this time because of the oral pronouncement of the Court.

Q. Let me ask you this: Did you give special instructions on January 26th, 1968, about how they should go about revising the jury list? A. No special instructions. no.

Q. Did you read to them anything other than the Georgia Law? A. I didn't read the law, no, but I—

Judge Bell: Well, the order has got special instructions in it?

The Witness: Yes sir.

Judge Bell: The order promulgates it.

[71] The Witness: Yes sir.

Q. There were no instructions beyond what was contained in the special order? A. No sir, except that we had to comply—well, as I say, comply with the oral pronouncement of the court relative to re-composition and revision.

Q. Is it more probable than not that you will revise the jury list in August of 1968? A. I would have to check here and I would have to see the number of names and how many I would draw at each term and see if I would have a sufficiency to carry me passed that point. I just don't know at the present time.

Q. There are 171. A. A 171 names on the Grand Jury?

Q. 121 Grand Jurors? A. 121 Grand Jurors, let me see now. Then 32—I wouldn't just right off hand, see the necessity. No, I would not because I will have another Grand Jury—lets see—in November. It's May, November and February. It's twice that we have a Grand Jury up there, I think. Anyway, I would have to look at my schedule.

Q. You do not anticipate drawing another Grand Jury before 1969? A. Oh, yes. I will. Lets see, I believe it would [72] be in August.

Q. Pardon me. I meant revising the jury list.

Judge Bell: Revising the jury list.

The Witness: At this time, I don't see it, no. Now, also, I could not anticipate the business of the court for the future of drawing of a traverse jury,

you see, either. If we need them, I will draw them. If we don't I won't. If we have to revise, I will, but at this moment I see no need for a revision in August.

Q. Now, Judge Bell asked a question that the Court was extremely concerned about, and I would like to iterate that question because I do not feel that the answer is clear and satisfactory, and that is how did you get down from 32 to 23 Grand Jurors? A. We draw a certain number of names, whichever I determine should be drawn, from the jury box, as you draw a lottery. As the name is drawn, it is put down as number 1, 2, 3, 4, 5, 6 and right on through—I believe this number is 32. All right, I take that list and if any given number is excused, then that of course means in effect the names below are moved up 1. If another one is excused all are moved up in their first order, that is, in the order in which they were drawn until I get that 23. Now, if there are remaining names on the list they, in effect, are not used. Now, if for any reason, and frankly it has never happened to my knowledge, but if—

[73] Judge Morgan: In other words, you call the first 23 in the box who have not been excused?

The Witness: Correct. Exactly, sir. And those that might remain at the bottom of the list are not used but if there would be any matter in which there would be a given number to disqualify of the maximum number of 23 and I needed more to take their places because of disqualifications, I would then possibly use those—what would you say—overage?

Judge Bell: In the federal system they are alternate jurors.

The Witness: Yes sir, in effect.

Q. Let me ask you this Judge: How many Grand Jurors did you excuse following the revision in January '68, this year? A. How many did I excuse?

Q. Yes sir? A. I couldn't remember that. We had a maximum of 23, and it seems to me like there were three maybe, three who were there that we didn't use—that would be 26—we must have used—there must have been about maybe six. Could be six, maybe five, I am not sure.

Q. That were excused? A. In effect, yes. Not used, lets say.

Q. The Grand Jurors that were actually drawn were moved up from a pool of 26 by including about three alternates? A. Yes.

Judge Bell: Now, let me ask you another question: Is [74] any public record made of this list of 32 and what happened to them finally?

The Witness: Yes, you see—

Judge Bell: —You see, this could get to be a variation. We have case after case about this, so we might as well get it settled.

The Witness: Well, I am just confident that the Clerk—you see, I have what they call the master list, or maybe his record is the official list; but he marks his list from mine, and to be perfectly frank I would be surprised and amazed if he didn't keep that original list because we refer back to it so often to see—

Judge Bell: —It is important because some Negro citizen might want to walk into some public office and say: "We are suspicious that somebody has eliminated the Negroes from the Grand Jury. I want to see the list."

The Witness: I am just positive almost as I sit here that that list is preserved in every county.

Mr. Bloch: Would you like for us to file, as a part of the record, anything that we can find with respect to that from the Clerk's records?

The Witness: You will find it exactly like I said, I am sure.

Mr. Moore: Judge Bell is trying to determine whether or not the list of grand jurors is published in the county paper.

[75] Judge Bell: No, but I understand that is usually done.

The Witness: Yes sir. That is a courtesy, more than anything else, but you know I doubt that it might have been done in this special instance because of the lack of time.

Judge Bell: What I really want to know is—I have practiced law and I have seen this many times, they hand you a list of jurors and it is my impression that list is on the Minutes somewhere in the state courts and in the federal courts, but I don't know about this 32 list. If John Doe is excused then somebody ought to write on there "excused."

Judge Morgan: The Sheriff would have to subpoena him though.

Judge Scarlett: You use that in striking the jury.

The Witness: I am very confident if you want that list or if anybody wants it, you can get it.

Judge: Well, Mr. Bloch says he will get it. But I want to get the system down, because one of the complaints the plaintiff has is the system. Now, we are making some progress here, but I want to be certain that there is not some sort of a gap left.

Mr. Bloch: Whatever is there, will be presented.

Judge Bell: All right.

Mr. Moore: What Judge Bell is after: Is the list open to the public in the office of the Clerk of the Superior Court?

The Witness: Very definite. Every record there is open. [76] If not, let me know it, and I will see that it is open.

By Mr. Moore:

Q. And does that include the 32 grand jurors drawn to serve for a particular term of court? A. Why, of course, it would be.

Q. Would that list of grand jurors show the ones that had been excused? A. It would, but possibly not the reasons. The reasons probably would not be written by it.

Q. This would be public information? A. Oh, yes, just like any other record in the Clerk's office would be.

Judge Bell: And that list would be in the order in which those names were drawn?

The Witness: That's true.

Judge Bell: In other words, when you pull out John Doe—

The Witness: Right.

Judge Bell: The Clerk writes down John Doe as Number one?

The Witness: Correct.

Judge Bell: And on down the list?

The Witness: Yes sir.

Judge Scarlett: And you call them out?

The Witness: Yes sir, numerically, one, two, three and right on down the line.

[77] Mr. Bloch: Are your Honors through?
Judge Bell: Yes.

Redirect Examination by Mr. Bloch:

Q. Therefore, as I understand it, when they are drawn out of the box there is a list of 32 names made, is that right? A. Yes sir.

Q. In the order in which they were drawn? A. Yes sir.

Q. Then that list of 32 were turned over to the clerk? A. Yes, sir. Well, he makes that list as I call them out. He numbers down to however many I call. We will say maybe we will draw 32 and then draw 35 to be sure we have enough to get the qualified number of jurors.

Judge Morgan: And then subpoenas are issued for them and they are turned over to the sheriff?

The Witness: That's right.

Q. That is the list that he uses for the basis of his subpoenas? A. Yes sir.

[78] Q. And then the requests for excuses start coming in? A. Yes sir.

Q. And the 32 is reduced to 23. And what we want is that list of 32, showing the nine who were stricken, and if possible why? A. Well, the list would not show the excuses.

Judge Bell: We don't need to know why.

Mr. Bloch: You don't want to know why?

Judge Bell: No.

Judge Scarlett: That wouldn't be shown no way, would it?

The Witness: No sir. That probably would be on the list that I had but not on the clerk's list.

Judge Bell: Well, what the Court wants to know is an answer to this question, because in some manner a Negro grand juror, otherwise drawn is served, is eliminated out of turn, see. That is really what we want to know about. Have you got that?

The Witness: Well, Judge, may it please the Court—

Judge Bell: —You think that did not happen?

The Witness: I am certain that it did not happen and has never happened.

Judge Bell: Well, get the list and see what it does show.

[79] The Witness: All right, sir.

Judge Bell: All right.

The Witness: Is that all for me?

Judge Bell: Yes sir. Thank you, Judge.

Mr. Bloch: Is Mr. Griffith ready to come back to the stand?

Judge Bell: Yes, put him back on the stand.

Mr. Bloch: Come back to the stand, Mr. Griffith.

[80] C. A. GRIFFITH, Recalled for further examination, testified as follows:

Judge Bell: You were going to tell us about how many Negro women were on the list.

The Witness: To the best of my knowledge, Your Honor, there are 23 Negro women on the Grand Jury, and 70 Negro Women on the Traverse Jury.

Judge Bell: Twenty three Negro women on the Grand Jury?

The Witness: Yes sir.

Judge Bell: That's out of 37 women. How many—seventy?

The Witness: Seventy on the Traverse Jury, yes sir.

Judge Bell: Out of a 149?

The Witness: Yes sir.

Judge Bell: All right.

Judge Scarlett: Any other questions?

Judge Bell: You heard his testimony, didn't you?

Mr. Moore: Yes sir.

Judge Bell: Now, let me ask you a question. This is the way of an estimate, to the best of your knowledge and belief?

The Witness: Yes sir.

Judge Bell: You don't actually know?

The Witness: I don't actually know, no sir.

Judge Bell: All right.

Mr. Moore: I want to ask him a question or two.

[81] *Recross Examination by Mr. Moore:*

Q. Mr. Griffith, did you receive any instructions from Mr. Bloch as to how to draw up the Grand Jury?

Judge Bell: Well, wouldn't that be confidential relationship between attorney and client? They may not claim the privilege.

Mr. Bloch: I don't claim it privileged, and I state in my place that the answer is "yes."

Judge Bell: All right.

Q. Do you have a copy of the instructions that Mr. Bloch gave you? A. Do I have a copy of the instructions?

Q. Yes sir? A. No, I do not.

Mr. Bloch: You have that card we prepared.

Q. But you don't have a copy of the instructions that Mr. Bloch gave you? A. Mr. Bloch gave us this in considering the qualifications of the jurors.

Q. Did he give you any oral instructions or any directions that you don't have on the card there? A. Yes, he did.

[82] Q. Was that pertaining to the grand jury? A. We thought that this way would be the best way of drawing the grand jury. We asked him by 'phone, and he said that he thought that would be a fine way to do it.

Q. Did he tell you the number of Negroes to put on there? A. No, he did not.

Q. Did he give you any instructions at all with respect to how you should go about including Negroes on the grand jury? A. No, he did not.

Q. No mention of that? A. What? What was your question?

Q. He made no mention about including Negroes on the grand jury? A. Yes. We knew that we were going to include Negroes on the grand jury.

Q. But there was no discussion at all about the number of Negroes to be included? A. I don't think there was.

Q. You say you don't think there were. Are you sure about that? A. No. I don't think he said to put twenty or ten or anything like that, no. We ended up with 44, and when we got through we told him the figures we come out with and he said he [83] thought that was fine.

Q. Before you drew up the grand jury, did you know how many you were going to put on it? A. Before?

Q. The total number of jurors, black and white, that you were going to put on it. Did you know before you drew up the grand jury how many you were going to put on the grand jury list? A. Two fifths of the total number that we had here.

Q. And that would be 121? A. Yes sir.

Judge Bell: That is the Georgia law, isn't it?

The Witness: Yes sir, not to exceed two fifths.

Q. Was there any discussion about how many of those 121 should be Negroes? A. No, there wasn't any discussion about how many should be, but we ended up with 44 and everybody agreed that was sufficient.

Judge Bell: It was drawn by lot. Doesn't your Report say it was drawn by lot?

The Witness: Yes sir.

Judge Morgan: At random?

Judge Bell: No. When they took the grand jury, they took all of the traverse jurors and drew them out by lottery. [84] Wasn't that the way you did it?

The Witness: Yes sir.

Judge Bell: All right.

Q. Did you physically draw out a card, or what document or paper did you draw out in drawing the grand jury? A. We made the cards up, as I testified before, of the people who were accepted. We put all the cards in alphabetical order. We went through. We taken the A's, the first name, it was put to the left. The second A was put to the right.

1, 2, 4, 6 on through like that. When that was through, we taken these cards that were even numbers, we typed them on big sheets of paper, and from that list of names we gave them to the Clerk of the Court who typed them on little pieces of paper, and those were tore in strips and were put in a jury box and it was closed up and it was turned round and round and we opened it up. There was another box open and we reached in there and got a name out, we called that name out, and wrote it on there and put it in another box. That's the way we done it.

Q. So that's the way you drew up the grand jury list?

A. Yes.

Q. And you had no idea as to how many Negroes you included? A. We didn't have any idea and we ended up with 44 [85] and we thought that was sufficient.

Q. Now with respect to the election list, how many election lists did you have. A. We had one.

Q. One election list? A. Wait just a minute. We had two the first day we started. That was the first thing we did. Mr. Watson, who is Chairman of the County Commissioners, called the Secretary of State's office, and asked him to please send us a voters list of the last election, and I believe we received it Tuesday afternoon.

Q. And was this marked by race? A. No sir it was not.

Q. There was nothing to indicate the races on the voters list? A. No sir, there was not.

Q. Was it in alphabetical order? A. No. I think there was a supplement list, but it was not in alphabetical order.

Q. Was it by militia districts? A. I believe it was, yes.

Q. It was by militia districts? A. Yes, I believe it was.

Q. Militia districts have racial concentration, do they not? [86] A. Well, I would think some of them would, yes.

Q. Particularly Militia District 606, is that right? A. There is not a 606 Militia District in Taliaferro County.

Q. Your testimony there is not? A. Yes.

Q. How about 604? A. 604?

Q. Yes sir? A. I couldn't say.

Q. Springfield and Linesville Districts? A. Linesville and Springfield, the way it was listed on the voters list that we had it ended with 601, which is Crawfordville.

Q. Were the names listed under each Militia District in alphabetical order, or listed by postoffice, or how? A. I think they were listed in alphabetical order.

Q. Do you have a copy of that list available with you? A. No, I do not. If you need it, I can get one.

Judge Bell: The Secretary of State, I think, has got plenty of them.

The Witness: Yes sir.

[87] Mr. Moore: Well, they have them, Your Honor. They can be photocopied and put in evidence.

The Witness: I don't have one with me.

Judge Bell: The Secretary of State will send you one and you can put it into evidence, if you want to.

Mr. Moore: I would like to put it in evidence. I would like to get a copy of the list they actually used.

Judge Bell: But he says he has not got it with him.

The Witness: I don't have it with me, no.

Mr. Moore: He can make it available, Your Honor.

The Witness: We will be glad to make it available.

Judge Bell: Well, they may have it all marked up.

The Witness: No sir, it is not marked up, no sir.

Judge Bell: Well, if they haven't marked it up some way you might have it.

Mr. Bloch: Do you want us to put it in the record?

Judge Bell: We don't need it in the record, but if he wants it he can get it and put it in evidence. That's up to him.

Mr. Moore: I would like to have it, Your Honor.

The Witness: I can get one from the Secretary of State.

Judge Bell: Well, let him have that one and put it into evidence—over 2,000 names.

The Witness: That's right.

Judge Bell: Let me ask him a question, since you are about to run down. Let me ask him a question. These various [88] category of people, some of them you couldn't find, and some that didn't stay around long, did you keep those names separately?

The Witness: Yes sir.

Judge Bell: Have you got all of those names?

The Witness: Yes sir.

Judge Bell: I suppose it would be a simple matter, if anybody wanted to know, how many of them were Negroes and how many of them were White?

The Witness: Yes sir, they could find out.

Judge Morgan: Do you have a list of the dead people?

The Witness: Yes sir, I have a list of the dead people.

Judge Bell: Mr. Moore wants to know how many of those 93 were dead. That would be both Negroes and White and it would be easy to find out.

The Witness: I will be glad to show him.

Judge Bell: Why don't you put that into evidence, Mr. Bloch?

Mr. Bloch: How is that?

Judge Bell: He says all of these categories on Page 4. There are 79 people who are under 21 years of age. He has a list of those.

Mr. Bloch: Was that 79?

Judge Bell: Yes. He has a list. This prolongs the thing, but he does have that list, Mr. Moore.

[89] Mr. Moore: We would like to get a copy of it.

Judge Bell: He says that he has got all of these categories. If anybody wants to know how many Negroes, they can go out and find out.

Mr. Bloch: List of categories on Page 4.

Judge Bell: Page 4. 33 names on Page 5. They are on the list twice.

Mr. Bloch: In other words, where it says "poor health and overage 374", and we are to furnish who are those 374?

Judge Bell: Right.

Judge Morgan: What is the Georgia law now in regard to those over 65.

Judge Bell: Now, that's automatic, isn't it? OVERAGE?

Judge Morgan: What is the age limit in voting in Georgia? It's 18, isn't it, but the service on the jury, what is the prerequisite?

The Witness: 21.

Judge Morgan: 21?

The Witness: Yes sir.

Judge Morgan: So, there is no discretion. Anybody between 18 and 21 were automatically eliminated, like we have to do in the federal courts.

Mr. Bloch: That was one of the questions that we discussed in Macon, the difference between 18 and 21, and—

[90] Judge Morgan: Anyone under 21 years of age were eliminated as required by the law?

The Witness: Yes sir. He was talking about 514, there are a lot of people who work in Atlanta and different places and come home every week end.

Judge Bell: Now, that's a thing that requires a lot of work—

The Witness: And people in the Service.

Judge Bell: —To get this thing up.

The Witness: Yes sir, it sure does.

Judge Bell: Now, there are 514 here. I think probably due to the nature of this case it would be well to put all of these categories in. Let the Court say this: It wouldn't be anything against the law if the next time you get ready to get your list up the Clerk of the Jury Commissioners, he could hire a Negro, couldn't he?

The Witness: Yes sir.

Judge Bell: You don't have a Negro on your Board, and so the plaintiffs say: "What's going on there"? "We don't know what is going on. We didn't have anybody over there to see what was going on." That's the same way with the school board, you see. We found that to be true in the Birmingham case. The first thing they did was to get some Negroes to work on the Jury Commission, and then everybody understood what was going on. That would be something that you could [91] do, see.

The Witness: We will be glad to. Lets not say that it wouldn't be a good thing to put a Negro on

the Jury Commission but since there is not one of them there you could get the clerk who is.

The Witness: Yes sir.

Judge Bell: And then you wouldn't have all of this.

Judge Scarlett: Would that guarantee to be the end of it?

Judge Bell: No, he is not guaranteeing it. I am just giving them a suggestion.

Judge Scarlett: But would somebody guarantee that that would be the end of it?

Judge Bell: I don't know whether we will ever have the end of it or not. Mr. Moore, do you have anything else you want to ask him?

Mr. Moore: No sir. We would like to see the copy and see the list before we tender it into evidence.

Judge Bell: They are going to put them in.

Mr. Moore: We would like to see copies of them.

Judge Bell: See what?

Mr. Moore: We would like to see copies of them and see the list before they are tendered into evidence.

Judge Bell: Off hand, it looks like if you could get every Jury Commission in Georgia to do this you ought to be well satisfied.

[92] Mr. Bloch: Well, what I propose to do is to send it to the clerk with a copy to him. I am not going to ask him if I can send it to the clerk.

Mr. Moore: I would like to know if I could withdraw it from the Clerk's office. I don't want any bootlegging into evidence.

Judge Bell: What do you mean by that? What are you talking about?

Mr. Moore: I want to look at it and examine it, Your Honor, before it becomes a part of the official record.

Judge Bell: Well, you want it to either go into evidence or not. We are not going to run this case forever. We have got other cases you know. I want to get that over to you. You know other people have rights.

Mr. Moore: Yes sir.

Judge Bell: And other people have got a right to have their cases tried.

Mr. Moore: Yes sir.

Mr. Moore: Yes sir, but we would like to request a copy of this list.

Judge Bell: Well, he is going to put it into evidence, and send a copy to you.

Mr. Moore: Yes sir. Very well.

Judge Bell: That is all he can do. We can't run a [93] side court, or side hearing, and have one going on between you and Mr. Bloch on whether or not you are going to agree to put something in when we have already discontinued the hearing, see. Let him put it into evidence and you will get a copy of it.

Mr. Moore: All right, sir.

Judge Bell: And it will be filed subject to your objection.

Mr. Moore: All right, sir.

Judge Bell: If you want to object, you can file an objection to it. All right, anything else you want to ask this witness?

Mr. Moore: No sir.

Judge Bell: Do you want to ask him any more questions, Mr. Bloch?

Mr. Bloch: Just one or two more questions.

Judge Bell: All right.

Redirect Examination by Mr. Bloch:

Q. In addition to what you have testified with respect to the instructions that Mr. Owens and I gave you in Macon with respect to your duties in following out the Court's directions [94] at that time, we had not seen the order of Judge Stephens at that time, had we? A. No sir.

Q. And in addition to what you have stated, I also recited to you the oath that a traverse juror had to take, "that you shall well and truly try each cause submitted to you during the present term" and so forth? A. Yes sir.

Q. And I told you that I thought you were entitled to consider that as a part of your guidelines? A. Yes sir.

Q. And also, in as much as the grand jury list was selected from the master list, that you should take into consideration the grand juror's oath, which is, in substance, that the grand juror keeps secret and inviolate and so forth, and that you could consider that in connection as to his uprightness and intelligence? A. Yes sir.

Judge Bell: All right, now you can go down, Mr. Griffith. Thank you very much.

The Witness: Thank you, sir.

Judge Bell: All right, now, we will take about a ten minutes recess and then we will wind it up.

(Note: At this point the proceedings were recessed for about ten minutes after which the proceedings were resumed as follows on next page.)

[95] MRS. LOLA WILLIAMS, was next called as a witness for the defendant, and after having been first duly sworn the truth, the whole truth and nothing but the truth to tell, testified as follows:

On Direct Examination by Mr. Bloch:

Q. Mrs. Williams, I believe that the Court knows that you are the Superintendent of the Taliaferro County Board of Education? A. Yes sir.

Q. You are Mrs. Lola H. Williams? A. Yes.

Q. Mrs. Williams, the present composition since February 6th, 1968, of the Taliaferro County Board of Education is Mrs. Willie Mae Fambrough, Chairman, Mr. Carl Chapman, Vice Chairman, Mr. Casper Evans, Mr. Horace Hill and Mr. Moore Pitman, is that correct? A. Yes.

Q. Now, the Chairman of the Board of Education, Mrs. Willie Mae Fambrough is here, is she not? A. Yes.

Q. She is the lady on the front row out there, on the left there? A. Yes.

[95] Q. Who prefers, by reason of her health, not to testify? A. Yes, sir.

Q. But she is here in court if the court wants her? A. Yes sir.

Q. With respect to that membership of the board, which I have just read to you, Mr. Moore Pitman was appointed by the board, or selected, by the Board at the meeting of October 3rd, 1967, was he not? A. Yes sir.

Mr. Bloch: Mr. Moore, I believe that Mr. Owens furnished you copies of these Minutes of the Board of Education?

Mr. Moore: I subpoenaed the Minutes, but I haven't been furnished with copies.

Judge Bell: He asked you if Mr. Owens furnished you with copies?

Mr. Moore: No sir.

Mr. Bloch: I will give him a copy.

Judge Bell: All right.

Mr. Bloch: Because I want to withdraw these originals.

Judge Bell: All right.

Judge Searlett: Where is Owens today? He didn't come down?

[97] Mr. Bloch: He is tied up on a case.

Judge Searlett: What?

Judge Bell: He said he was tied up on a case. He brought Mr. Hall with him.

Q. I call your attention, Mrs. Williams, to the Minutes of October 3rd, 1967, and the recitation particularly there in "Resignation of two board members reported to the board, Horace Williams, Jr., and Dillard Noggle"? A. Yes.

Q. According to Georgia School Law, Code Section 32-905, it is the duty of said board to elect or appoint to fill vacancies until the next term of court at which time these or others shall be appointed by the grand jury. The board appointed at this time Mr. Moore Pitman and Larry Beasley—

The Reporter: —Who? State that again.

Mr. Bloch: Mr. Moore Pittman, of Raytown, and Mr. Larry Beasley.

Q. Now Mr. Pittman is still a member, is that correct? A. Yes.

Q. Now, at the meeting of January 25th, 1968, January 25th, 1968, it reads "The Taliaferro County Board of Education met for a special meeting in the Superintendent's Office Thursday afternoon, January 25th, 1968 for the [98] specific purpose of accepting the resignation of Larry Beasley and electing a member of the Negro race to replace Larry Beasley until the next grand jury meets. Casper Evans, Sr. was elected by the Members of the Board of Education to serve from district 606." Now, that is the way the Minutes read? A. Yes.

Q. Is that correct? A. Yes sir.

Q. Then on February 6th, 1968, the initial paragraph is "The Taliaferro County Board of Education held its regular monthly meeting on February 6th, 1968, at 10:00 A. M. in the Courthouse at the Superintendent's Office. The following members were present: Mrs. Willie Mae Fambrough, Chairman, Mr. Carl Chapman, Vice Chairman, Mr. Casper Evans, Horace Hill and Mr. Moore Pittman?" A. Yes.

Q. They were all there? A. Yes.

Q. And I notice in there this paragraph: "The new member, Mr. Casper Evans, Sr., was welcome to the Board and a book "Whatever a board member wants to know" was presented to him." Is that correct? A. Yes.

Mr. Bloch: That's all.

[99] Judge Bell: All right. Are you going to have copies of those made?

Mr. Bloch: I think I have them already.

Judge Bell: All right.

Mr. Bloch: And I will give him a copy.

Judge Bell: All right.

Cross Examination by Mr. Moore:

Q. Mrs. Williams, do the Minutes show at what time the meeting on October 3rd, 1967 was held?

Mr. Bloch: I read it. The Taliaferro County Board of Education held its regular monthly meeting on February 6th, 1968 at 10:00 A. M.

Judge Bell: He said the meeting of October 3rd.

Mr. Bloch: The October meeting?

Judge Bell: Yes.

Mr. Bloch: "The Taliaferro County Board of Education held its regular monthly meeting at 10:00 A. M., in the courthouse with the following members present:"

Mr. Moore: That's October 3rd, 1967.

Q. Now, Mrs. Williams, was any published notice given of the meeting? A. Which meeting?

[100] Q. The meeting of October 3rd, 1967? A. I am not sure that any public notice was given of that particular meeting.

Q. Was any public notice given of the meeting of February 6th, 1968? A. February 6th?

Q. Yes, Ma'am? A. I am not sure of a public notice of that meeting. We do not give a public notice of every board meeting.

Q. What is the practice with respect to giving public notice of board meetings? A. Mr. Bloch—I gave all that information to Mr. Owens in a letter.

Mr. Bloch: What was that question? I was trying to get these copies up.

Judge Bell: Wait a minute. Ask the question again, Mr. Moore.

Q. What is the practice with respect to giving public notice of board meetings?

Judge Bell: Mrs. Williams can answer that question. Just a minute. The Court at the last hearing instructed counsel, Mr. Owens, to furnish us with any notices that had been given in the past year or so. I have forgot whether it was a year or two years of meetings and some data when the meetings were actually held. You remember that one of the charges were that you had [101] been having secret meetings, that you had been having meetings and that nobody in the Negro community could find out when the board was going to meet and we wanted to get these notices to see if you actually held meetings when the board set the meetings to be held. Mr. Owens was going to get that information for the court.

Mr. Bloch: I have a bunch of newspapers with advertisements in them.

Judge Bell: Well, that is what Mr. Moore is asking about. He wants to know what the practice has been. Now, Mrs. Williams, can you answer that?

The Witness: Yes.

Mr. Bloch: I will give them whatever we have got.

Judge Bell: All right.

The Witness: According to the law we are supposed to—we can change a date, at least twice. I think, during a year, and if we do to publish this date, and usually it is set at the beginning of the school term. Well, we have, through the years, and I did write all of this in a letter to Mr. Owens to

be turned in as information. I believe, in 1963, we put a notice in the paper that the time would be moved to eight o'clock at night, and it had always been since 1933—I went back through my Minutes—at 10:00 o'clock, first Tuesday meeting—

Judge Bell: Ten o'clock in the morning?

[102] The Witness: Yes sir. Until this eight o'clock, which was published. We had not been publishing unless there was a change, a big change, which there had not been. At the eight o'clock it was put in the 1963 paper which I sent to Mr. Owens and which I got out of the Ordinary's Office, and I also stated the reason we did that was because I was having to act as principal and superintendent at that time and we had our ball games—anyway it was better that we meet at night, therefore we did publish that, and we have continued to meet—there may have been at 7:30 but I don't think that would be—you know, we changed time, I don't think that is relevant because—

By Mr. Moore:

Q. —Let me ask you this, did you meet from 1963 to 1968 at eight o'clock at night? A. I was fixing to point out, at 7:30, as you will note in some of the Minutes, it was at 7:30, but as you know last spring we changed the time here in Georgia, but if anybody wanted to come certainly the thirty minutes would not have hindered them to wait or to be there because that would really be earlier, but any other special meeting I minutes showed that we have had very few, if any, special meetings except at this hour, and the only other change would be on a Labor Day in which we

would put a notice out at the courthouse on the bulletin board that we would meet the next day, but as our Minutes show we did not hinder this other group from coming to the meeting, but—

[103] Judge Bell: Well, wait a minute. You are answering something he hasn't asked you about. He just wants to know about the times.

Q. Now, Mrs. Williams, in 1963 you met at eight o'clock on the first Tuesday in the month, is that right? A. We started meeting on Monday night at eight o'clock.

Q. And you changed it? A. Yes.

Q. And you changed it in 1963 until 7:30? A. Yes, it was either 7:30 or 8:00 o'clock that we met and everytime since then except on one occasion or two if it was a Labor Day or a New Year, something like that.

Q. Now, the practice that you stated generally, which commenced in 1963, did it continue up until the school year of 1967-68? A. Yes.

Q. Now, during the school year 1967-68, did you change your meeting time? A. Yes, we did. We changed the meeting time.

Q. When did you change the meeting time and to what? A. I believe the Minutes will show that we changed it back to the old original time, to the morning time.

[104] Q. At 10:00 o'clock on the First Tuesday? A. That is correct.

Q. Did you run a notice of the change? A. We have since then. It was not and I think that we have an edition of the paper that showed that Mr. Carey Williams acknowledged publicly, the publisher, that it was not published through his error.

Judge Bell: Let me get this straight. When did you change to the 10:00 o'clock meeting?

The Witness: Back in September of 1967.

Judge Bell: Last September?

The Witness: Yes sir.

Q. And your testimony is that wasn't published immediately through an error attributed to the publisher? A. That is correct.

Q. I see.

Judge Bell: Now, when was the notice published by him?

The Witness: And then we have put another one in and we have run it three weeks now.

Judge Bell: Since last year?

The Witness: Yes sir. And Mr. Williams acknowledged in there that it was through error that it was not in the paper.

Judge Bell: All right, go ahead.

Q. And when did he first acknowledge that there was an error? [105] A. Well, I called him because I wanted everybody to know about it.

Q. Was it before or after this court that— A. —Yes, afterwards.

Judge Bell: You say it was afterwards?

The Witness: Yes sir.

Q. You called Mr. Williams? A. Yes sir.

Q. And at that time he acknowledged that he had made an error? A. Yes, he did.

Q. Do you have any record or correspondence that would show the notice which your office communicated with Mr. Williams since 1967? Any published notice? A. No.

Q. And the meeting time now is at 10:00 o'clock in the morning? A. Yes, 10:00 o'clock in the morning.

Q. And what is the reason for meeting at 10:00 o'clock in the morning? A. Well, that has always been the original time of meeting, like most other meetings are usually held. I think in most places that has always been the practice except on some special occasion.

[106] Q. Are your meetings attended by Negro parents of Taliaferro County? A. They have been.

Q. They have? A. Yes.

Q. Did the Negro parents of Taliaferro County attend your meetings in September of 1967, October, November and December? A. No.

Q. Have they attended any of your meetings since the court met? A. No.

Q. Have they attended any of the meetings since the hearing in Augusta in the case in which you were involved? A. We have the Minutes at the last time that—

Q. I am asking you if Negroes attended the meetings? A. Well, the date is in the Minutes, as I pointed out. I am not sure what date that was. I think it was in December of 1966. I am not positive.

Judge Bell: He means since the hearing in Augusta a month ago?

The Witness: No sir. I said no.

Judge Bell: You have not had any Negroes attend the meetings?

[107] The Witness: No, sir.

Judge Bell: Well, you had Mr. Beazley attend?

The Witness: Yes. He is a Negro.

Judge Bell: He is a Member of the Board of Education?

The Witness: Yes, sir, he is a new board member.

Judge Bell: Well, he is a member of the Board of Education?

The Witness: Yes.

Mr. Moore: Not Mr. Beazley. Mr. Evans.

Judge Bell: Evans. Mr. Casper Evans, Sr.

Mr. Moore: Right.

Judge Bell: But you mean some parents, or patrons of the school, who were interested in the school?

Mr. Moore: Yes sir.

Q. Now, Mrs. Williams, did you give public notice of the existence of the vacancy on the Board of Education? A. That is the duty of the Clerk. He always has it put in the paper.

Q. Clerk of what? A. Clerk of the Court.

Q. Aren't you the Ex-officio—or aren't you an Ex-officio Member of the Board of Education? A. Yes sir, that's correct.

Q. And you are its administrative arm or officer? A. Yes.

[108] Q. That is with respect to board matters too, isn't it? A. Yes sir, that is correct. I believe the Georgia law says that he should be.

Q. Does the Board of Education give you any instructions, as clerk, of the existence of a vacancy on the Board of Education? A. No. I have never had to do that.

Q. Was any public notice given to the parents of Taliaferro County of the pending election of Mr. Evans to the Board and Mr. Moore Pittman? A. No.

Judge Bell: Is there any law that requires that, Mr. Moore, or are you just asking it as a fact?

Mr. Moore: Your Honor, I would not want to state in my place whether it was the law or not. I am not sure.

Judge Bell: All right. You just want to know as a matter of fact if it was?

Mr. Moore: Yes, Your Honor.

Judge Bell: All right.

Q. Was any public notice given to the parents of Taliaferro County that Mr. Evans had been elected to the Board of Education? A. No.

Q. And that same thing would be true as to Mr. [109] Moore Pittman? A. Yes.

Q. Now, Mrs. Williams, what is your connection with—

Judge Morgan: —That would be in the Grand Jury Presentment which is required to be published.

Mr. Moore: Let me ask that question, Your Honor.

Q. Does the election of Members of the Board of Education appear in the Grand Jury Presentments? A. Yes.

Q. And the Presentments are published? A. Yes.

Q. As the affairs of the grand jury? A. Yes.

Q. Now, do you have any knowledge as to who nominated Mr. Evans for board membership?

Judge Morgan: How could she be in the Grand Jury room?

Judge Bell: You mean the School Board.

Q. Strike that. Does the Board of Education make suggestions of nominations of names of persons to fill vacan-

cies on the Board of Education to the Grand Jury? A. I believe, in this instance, never, that I know of. I don't know of any having talked to any grand jurors. I know for myself I have not. Now, this particular—

[110] Judge Bell: —Well, now, you all are getting off the track. What he is trying to find out is who, among you and the Board of Education, nominated Mr. Evans?

The Witness: Well, the Board of Education.

Judge Bell: Well, don't you send the names to the grand jury?

The Witness: No sir.

Judge Bell: Or to the Judge of the Superior Court?

The Witness: No sir. We never have in the past, but since we were told or asked or petitioned that we felt that in this situation we were in that they were told, that the grand jury was told, I believe, that there would be an appointment. They had to be told that this appointment had to be filled.

Judge Bell: I thought, under the Georgia Law, the School Board selected people to fill the vacancies.

The Witness: Yes sir.

Judge Bell: Until the grand jury convened again?

The Witness: But they are not bound to go by what we have done.

Judge Bell: I know. But did you select Mr. Evans?

The Witness: Yes sir.

Judge Bell: Did the School Board select Mr. Evans?

The Witness: Yes sir, they certainly did.

Judge Bell: And you selected Mr. Pittman?

The Witness: Yes sir.

[111] Judge Bell: All right. Now, how, in the nature of things did it happen that the grand jury chose the same two people? Don't you suppose they must have known something about them being on the Board of Education?

The Witness: Yes, they did know.

Judge Bell: All right, that is what Mr. Moore is trying to find out.

Judge Scarlett: Wasn't the presentiments of the grand jury published in the paper?

The Witness: They will be. We haven't had time yet.

Judge Bell: They haven't got to that yet. Now, Mr. Moore, you are trying to find out who suggested Mr. Evans' name in the Board of Education meeting?

Mr. Moore: Yes sir.

Judge Bell: That is what he wants to know.

The Witness: Well, now, that does not happen to be in the Minutes, I don't think, as to who made the motion but it was either Mr. Chapman or Mr. Hill.

Q. Was there any discussion of the qualifications of Mr. Evans for board membership? A. Well, no, not that I know of. I suppose they thought about it thoroughly before his name was placed in nomination.

Q. Was there any discussion about the nomination of Mr. Evans before his name was placed in nomination? [112] A. Well, I don't think, in the situation, I naturally being the one that came to court in Augusta that there was anything wrong with my discussion. I did talk with the board members as to what we were going to try to do in the situation.

Q. So your answer is that you did participate?

Judge Bell: Well, Mr. Moore, the Court made a statement in the court room to Mrs. Williams and everybody in Taliaferro County that it would be a very good idea to get not one, but two Negroes on the Board. I just happened to read it on yesterday. Apparently what you did, you went back home and got busy and you found Mr. Evans?

The Witness: Yes sir.

Judge Bell: And you appointed one Negro?

The Witness: Yes sir.

Q. Did you consider any other Negro for nomination to the Board of Education? A. The Minutes show that he was the one that was chosen.

Mr. Bloch: I have no objection particularly, Your Honors, but I can't see the materiality of that under the complaint here. The complaint of the plaintiffs is that there was no Negro on the Board of Education. Now, we have elected one and now they are going beyond that and complaining about who it is.

Judge Bell: Well, he is going to get around in a [113] minute and is going to claim that Mr. Casper Evans, Sr.—I suppose he is going to get off into the idea that he is not the right kind of Negro.

Mr. Bloch: Well, is that material?

Judge Bell: Is that where you are heading, Mr. Moore?

Mr. Moore: I think that is rather apparent, Your Honor, but our contention is this, Your Honor, that the procedure in the County does not lead to the election of competent people.

Judge Bell: Now, what would happen, Mr. Moore—I don't know how this is going to work—but by setting up this new jury system presumably somewhere along the line the democratic process will work, but we will let you ask the question about Mr. Evans, if you want to, and see if they considered anybody else, and if they tried to find under the Georgia Constitution a man who is favorable to elementary education the way that the constitution says, or something like that. You can ask that.

Q. Mrs. Williams, it is your testimony that there was no discussion of the qualifications of Mr. Evans for membership on the Board of Education? A. That was understood that he was qualified, that he was board membership caliber.

Q. But was there any discussion of his qualifications? A. No, not to me. He was put in nomination and elected.

[114] Judge Bell: He asked you if you discussed any other possible candidates?

The Witness: No. He was the one that the Board selected.

Judge Morgan: The Board was just making a temporary selection. The Grand Jury was the one that actually elected them.

Q. Was there any effort to contact anybody or any parents in Taliaferro County, particularly the plaintiffs in this suit? A. No.

Q. Mrs. Williams, what is your connection with the private schools in Taliaferro County? A. None whatsoever.

Q. Do you have any children enrolled in a private school there? A. No.

Q. Do you visit the school frequently? A. No.

Q. Your testimony is that you absolutely have no connection with the private school? A. Absolutely not.

Q. Do you know whether or not formerly white teachers who formerly taught in the Taliaferro County Schools are now teaching in private schools? A. Some of them do.

[115] Q. Would that be a majority of them? A. No sir.

Q. How many white teachers were there previous to this, Mrs. Williams? A. I cannot recall.

Judge Bell: Wait a minute. Lets pursue this a little further. Last year, or at the last hearing rather, they said there were only 72 children in this private school. How many teachers do they have there? Do you have any idea?

The Witness: They don't have over five or six teachers.

Judge Bell: All right.

Q. What effort did you make as Superintendent of the Schools, under the direction of the Board of Education, to prevent the Taliaferro County School System from becoming an all Negro system?

Mr. Bloch: What's the materiality of that, Your Honor. It would be absolutely immaterial and irrelevant to the issue in this case.

Judge Bell: Well, it is possibly material on the idea that they have not had any Negroes on the school board.

Mr. Bloch: Well, everybody knows that.

Judge Bell: And that they are not favorable to the common school system because they let the white people all leave. I suppose that is it, isn't it, Mr. Moore?

[116] Mr. Moore: Yes sir.

Judge Bell: We will let him ask a few questions along that line. We won't let him get too far.

Judge Scarlett: How can Mrs. Williams control all of that?

Judge Bell: She is the Superintendent of the schools.

Judge Scarlett: I know she is School Superintendent, but she said she didn't know anything about the school, the private school there and didn't have any children in the school.

Judge Bell: This is really more probably addressed to the Board of Education Members. Mrs. Williams is elected by the Board and her qualifications are not the same as a member of the Board of Education who is supposed to be favorable to the Public School System.

Mr. Moore: Well, don't she act under their directions?

Judge Bell: You are asking her if she made—what effort she made—

Mr. Moore: —Pursuant to the directions of the Board.

Judge Bell: —Not to prevent them from having a private school. You have a constitutional right to have a private school, as far as I know, but you are trying to find out if she did anything to try to keep the White children from leaving the public schools?

Mr. Moore: Yes sir.

[117] Judge Bell: Well, she can answer that.

The Witness: Well, the schools are open to all of the children of Taliaferro County. We have the Taliaferro County Highschool, Taliaferro County Elementary School and it is open to all the children of Taliaferro County.

Q. The question is, what effort did you make pursuant to the direction of the Taliaferro County Board of Education to prevent the Taliaferro County Public Schools from becoming an all black one? A. We were directed to open the schools to all of the children and they are open to all of the children, and the Board is doing everything it can to run as good a school as we possibly can for all the children and those who select to go there and we intend to continue to do that.

Q. But you have done nothing to encourage the White children who live in the county attend the public school system? A. The school, as far as the equipment is concerned, is better than it has ever been.

Judge Bell: In other words, your answer is that you are maintaining a good school?

The Witness: Absolutely.

Q. I am asking you what have you done to encourage the white children to use the public schools?

Judge Bell: I think—well go ahead and answer it. [118] Well, I think it would be better for you to ask her—you seem to know a good bit about this subject—to ask her specific things, whether she has done specific things. I suppose whether or not she asked

people to return to the public schools would be one of the things—questions along that line.

Mr. Moore: All right, sir.

Judge Bell: Ask her along that line.

Q. What have you done to keep the faculty of the Taliaferro County School System from becoming an all black school? A. Those people who were already employed in the school system, if they were doing an efficient job I recommended them and the principals to the Board of Education.

Q. What did you do about the white teachers? You have white teachers in Taliaferro County. A. That was their prerogative to go where they wanted to go.

Q. What did you do to keep them? A. We couldn't keep all the teachers. Our teacher allotment wouldn't allow us to do that.

Q. You made no effort to keep the white teachers? A. We would have had to replace some of the Negro teachers had we done that.

Q. Now, if you had kept the white children in the public schools your teacher allotment would have been larger, wouldn't it? [119] A. Very little, if any, because we were already using local funds. Our situation is so small.

Q. Now, how many white teachers did you formerly have? A. I believe all of that was given. I can't remember. All of that was given in evidence, I think.

Judge Bell: At the last hearing?

The Witness: Yes sir.

Q. Mrs. Williams, you never—

Judge Bell: —At that time they had about 200 white children in the county. Now, they have gotten down to 72 according to the last hearing.

Q. Now, Mrs. Williams, did you visit the principals and superintendents in surrounding counties, Taliaferro County, and request them not to receive the white children from your county? A. I have nothing to do with that.

Judge Bell: She wouldn't have a thing on earth to do with that. In fact, we tried that case before. I told you over in Augusta that if you had any evidence that the adjoining counties were taking Taliaferro County children that you could reopen the other case, the injunction that we had in that case. Lets don't try that case again.

Mr. Moore: I am just trying to find out what they are [120] doing to try to maintain the public school system in Taliaferro County.

Judge Bell: Oh, well, all right, go ahead and ask her and then get into something else.

Q. Have you sent any letters or publications to the white parents in Taliaferro County to encourage them to remain in the county? A. No.

Judge Scarlett: Is that her business to do that?

Judge Bell: Well, if she is running the public schools it is conceivably could be, but I don't want the record to indicate or leave the matter in this shape, Mr. Moore, when the Court—the Court knows that to appoint a receiver in that other case two years ago the Receiver talked to Mrs. Williams and

the School Board, this is what the Receiver reported to the Court, to me, that he had arranged with the Taliaferro County School System so they could maintain a public school, that they would negotiate with Greene County and let Greene County take over and run the Taliaferro County Schools, run some kind of a contract, that is what the Receiver told them, and I think it would be very unfair for the record to show that the Taliaferro County people have done nothing to try to save the public schools because they did try to do that and they were not able to do it.

Do you know anything about that, Mrs. Williams?

[121] The Witness: Yes. We worked very hard. We tried everything we could to merge the system and up to this date we haven't been able to do it.

Judge Bell: And the break down was with Greene County, is what the Receiver told me and not with Taliaferro County. They tried to save this school system the best they could. What has now happened was about to happen. I will say that because in this other case the Receiver did report that to me and nothing ever came of it and so nothing was done. Obviously, that is the answer in the end when you have 400 children in a public school, in a whole public school system and it appears that it is going to be merged with an adjoining county.

Q. Mrs. Williams, do you have a PTA in Taliaferro County? A. No.

Q. When was the PTA discontinued in Taliaferro County? A. I don't believe they had a PTA in several years.

Q. When was the first year that it was discontinued? A. I am not sure, but I think it has been several years.

Q. About 1965? A. That might possibly been the last year.

Q. That is when you first had complaints from the black [122] community about the quality of the schools? A. I don't remember the year.

Q. And you do not have a PTA there at the present time, is that right? A. What?

Q. You do not have a PTA there at the present time? A. No.

Q. Do you have any present plans to organize a PTA in the immediate future? A. No. I do not have any plans. The board does not have any plans. The principals are at their pleasure with the faculty. The board has not told them that they cannot have a PTA, and the Superintendent has not.

Q. Did the parents of the black community come to the board and ask you specifically about having a PTA?

Judge Bell: Didn't we cover this the last time? Didn't you prove by some witnesses that they went to the meeting at night at the courthouse and said that they wanted to get them a PTA.

Mr. Moore: Yes sir.

Judge Bell: Did somebody come and ask you to organize a PTA or to permit one to be organized?

The Witness: That's right, and the answer was given that it was up to the principal.

[123] Judge Bell: Up to the principal?

The Witness: Yes sir.

Judge Bell: All right.

Q. Have you given any instructions to the principal to go ahead and organize a PTA? A. No, I haven't say to do it or not to do it.

Q. You haven't encouraged the principal to organize one?

Mr. Bloch: Your Honor, I object to all of that as being irrelevant and immaterial to the issue in this case.

Judge Bell: The objection be sustained. It has got to be a big issue in Taliaferro County about whether or not they are going to have a PTA. Mrs. Williams says that they can have one. All they have got to do is to organize one, if the principal agrees to it. I believe that is something that you could settle over there in Taliaferro County. The Court doesn't want to get into the PTA business this morning. Get on with something else, Mr. Moore.

Q. Is the principal hired by the Board of Education?
A. Yes.

Q. Is the principal nominated by you? A. Yes.

Q. Are you the supervisor of the principal? A. Yes.

[124] Judge Bell: The Minutes show that the principal can organize. Now, don't pursue this now. This is enough on this.

Mr. Moore: Your Honor—

Judge Bell: —You are trying to impeach her some way.

Mr. Moore: Your Honor, it is not meaningful for the principal to have the authority to organize a PTA if his superior doesn't encourage it.

Judge Bell: Well, we are going to terminate this line if questioning about the PTA. We are going out of the PTA business. You can get something done about that over there locally.

Mr. Moore: Your Honor, there is nothing that we can do though.

Judge Bell: Well, I don't know about that. We are not going to have a hearing on the PTA. So far as I know the Federal Constitution hasn't got a thing in the world to do with the PTA. We are not here to see about a PTA.

Mr. Moore: The federal funds go into this system.

Judge Bell: Talk to HEW about that.

Mr. Moore: Your Honor, we can't talk to HEW.

Judge Bell: Why can't you?

Mr. Moore: But we can talk to the Court if the Court will let us.

Judge Bell: Well, the Court is not going to get into the PTA business. We are going to let this rest right here just like it is. The Superintendent has said that it is up to the [125] principal if you want to have a PTA. Now, he may want to have one. I don't know about that, but that is as far as we are going this morning on this.

Judge Scarlett: And she has testified that she has nothing to do with it either for or against it.

Mr. Moore: Well, sir, she is an elected official of the County and she is to express the will of the people in that county. She allegedly is to respond to their peaceful initiative to implement the program and the program that they want she expresses no opinion on it.

Judge Bell: Well, have you heard of the writ of prohibition? If you want to remove Mrs. Williams from office you might go into Taliaferro County Superior Court and test her right to hold the office, but we haven't got a thing in the world to do with that. First, it is very doubtful that this should be a Three Judge Court, but we have gone along with it and we have had two hearings. We have accomplished a great deal of what we suggested to be accomplished in Augusta. We are now down to the PTA business. Now, Mrs. Williams runs for office. If you don't like the way she runs the office I would suggest that you get a campaign up to defeat her, get somebody else in office. That is the way the democratic process works. It is no federal court's business to be getting into this sort of thing, that I can see.

Mr. Moore: Well, a part of the democratic process is that the court vindicates the rights which are protected by the [126] Federal Constitution.

Judge Bell: You haven't got any right to have a PTA.

Mr. Moore: We do have a right not to have a system that has purposely kept off blacks and receive federal funds in which the parents are not able to participate.

Judge Bell: Mr. Moore, the system has not purposely kept all black. Now, there is no reason to make a statement like that.

Mr. Moore: Your Honor, there is no other explanation of the system.

Judge Bell: The explanation is that the white people don't want to go. They could have gone over

to the Baptist Church and go to school in the basement if they don't want to go.

Mr. Moore: They may not want to go but they are not encouraged to go.

Judge Bell: You can't make them go. You can't force them to go. So far as I know, there is no law to require them to go.

Mr. Moore: I don't believe you have to force them to go, but you can encourage them to go.

Judge Bell: You think if they organized a PTA they would all come back.

Mr. Moore: I think it would be a beginning.

Judge Bell: Well, lets don't argue this any more. Now, if you have anything else you want to get into, go ahead. [127] Lets finish up. Anything else?

Mr. Moore: No other questions.

Judge Bell: All right, you may go down, Mr. Williams.

Mr. Bloch: Your Honor, I am somewhat handicapped about those newspapers because Mr. Owens was expected to be here but he got into the trial of a case Monday morning and didn't get through, but he did hand to me—I don't know that there are all—but they are all that I have been able to find. It is a photocopy of the front page of the Advocate Democrat, Crawfordville, Friday, October 4, 1963, that has an advertisement in it:

"Board to meet on Monday night. The Taliaferro County Board of Education will hold its regular monthly meeting the First Monday night in each month at 8:00 P. M. in the courthouse."

Judge Bell: Well, I tell you, I think Mrs. Williams' testimony pretty well covers all of this, and

I don't believe you need to put these papers in unless Mr. Moore wants to put them in. She testified that they did change the meeting date from night to morning last September and never put a notice in the paper, that the notice did not appear. She now says that the editor acknowledges that it was his error and has now run the ad. That was the complaint that the plaintiffs had, that they didn't know when the school board met, that they would go to the night meeting and there wouldn't be anybody there.

Mr. Bloch: That's February 9th, 1968, on the front page it says this: "The Taliaferro Board of Education holds its [128] regular monthly meeting at 10:00 A. M. on the first Tuesday in each month in the courthouse in the Superintendent's office.

Editor's note: The above notice was received in time for last week's issue", which would have been February 2nd,—“but the copy was misplaced and therefore omitted from the paper.”

“Editor.”

Then on February 16th is this notice: “Meeting date of County Board of Education. The Taliaferro Board of Education holds its regular monthly meeting at 10:00 A. M., on the first Tuesday in each month in the courthouse in the Superintendent's office.”

That was the 16th. The 23rd issue is out today.

Judge Bell: What do they do when they have a special meeting? How do they give notice to the public? Didn't she say they put a notice on the bulletin board at the courthouse?

Mr. Bloch: That's all I know about it.

Judge Bell: All right, I think she testified to that. Now, do you have any other evidence you want to put up?

Mr. Bloch: Your Honor, there is present Mr. Bill Watson, who is Chairman of the Board of County Commissioners of Taliaferro County, who may be able to throw some light on those numbers who voted at the various elections.

Judge Bell: If he has the figures, it would be helpful.

Mr. Bloch: Come to the stand, Mr. Watson.

[129] W. E. WATSON, was next called as a witness for the Defendants, and after having been first duly sworn the truth, the whole truth and nothing but the truth to tell, testified as follows:

On Direct Examination by Mr. Bloch:

Q. Mr. Watson, you heard the question that the Court, the Presiding Judge just asked me with reference if you had any figures that would throw light on the question raised earlier in the hearing as to the number of voters and so forth. If you have that, will you put it in the record, or state it to the Court rather? A. If Your Honor pleases, I could go through numerically some figures and some reasonings—

Mr. Moore: Excuse me, I object to this witness testifying along those lines. There is no qualifications for this witness to testify about any figures at all.

Judge Bell: Well he has got the same qualifications that Mr. Turner had. Mr. Turner testified in Augusta that there were 949 people, the best he could tell from his survey, was registered and within a hundred of that number voted.

Mr. Moore: Mr. Turner stated his from qualifications and experience. One was his connection with a civic group that [130] was concerned about voter registration. Secondly, he was consultant to this civic group that was concerned about voter registration. We don't know anything about this witness.

Judge Bell: Well, he hasn't said anything yet.

Mr. Moore: Well, he is fixing to start talking about figures.

Judge Bell: Well, you can object when the time comes if it isn't right.

Mr. Moore: I object on the grounds that he is incompetent, Your Honor.

Judge Bell: You are attacking his qualifications on the voir dire?

Mr. Moore: I mean there should be some type of qualifications.

Judge Bell: Well, he is Chairman of the County Commissioners. He is a politician. If he is Chairman of the County Commissioners he is a politician and most politicians know how many people are registered to vote and how many vote.

Mr. Moore: We have the Voter Registrant, Your Honor. We subpoenaed her at the last hearing.

Judge Bell: Well, she is not here.

Mr. Moore: We subpoenaed her at the last hearing. She claimed that she did not get the subpoena but she was present and she didn't testify.

Judge Bell: Well, that objection will be overruled. If this man is incompetent to testify in this area we will soon [131] know. All right, ask him, Mr. Bloch.

Q. You are Chairman of the County Commissioners of Taliaferro County? A. I am.

Q. How long have you been Chairman of the County Commissioners? A. Approximately four years.

Q. Were you elected by the people of Taliaferro County? A. Yes, twice.

Q. Twice? A. Yes.

Q. Did you run for office? A. Yes.

Q. As Chairman of the County Commissioners do you try to keep up with the questions such as you are about to lay before the Court? A. Yes sir. If I hope to remain in office I have to, yes.

Q. Now, state what K asked you awhile ago, any information you have on the subject.

Judge Bell: Don't ask him any such general question as that. Ask him how many people voted in the last General Election in Taliaferro County, if he knows.

[132] Mr. Bloch: All right, sir.

Q. How many people voted in the last General Election in Taliaferro County, if you know? A. Between 1650 and 1675.

Q. All right, do you know how many of those were White and how many were Negroes? A. They were approximately 50-50.

Q. Approximately 50-50? A. Yes sir.

Q. Do you have anything to do with the voters list, or the list of registered voters in Taliaferro County? Is that made up by the Board of Registrars, or how? A. Yes sir, by a Board of Registrars.

Q. Who appoints the Board of Registrars? A. I think the Judge of the Superior Court.

Judge Bell: Well, he doesn't know. He is not on the Board of Registrars. You have asked him all we wanted. All we wanted was to get the figures. He said it was about 50-50. In so far as the Negro vote is concerned is exactly what Mr. Turner said, and that would leave about the same number of Whites.

Mr. Bloch: That's all.

Judge Bell: All right, do you want to cross examine him?

Mr. Moore: No sir.

Judge Bell: All right, all we wanted to get were the [133] numbers anyway. Thank you, Mr. Watson.

Mr. Bloch: Your Honors, I would like permission to offer in evidence photographic copies of these two originals, serving counsel with a copy. I think when he gets back to Atlanta he will find that he already has some but I don't mind give him another set at this time.

Judge Bell: All right. Any objections, Mr. Moore?

Mr. Moore: No objections, Your Honor.

Judge Bell: All right, they are admitted without objections. That will be Number 3, I think. Now, do you have anything else, Mr. Bloch?

Mr. Bloch: No sir.

Judge Bell: All right, then you rest. All right, Mr. Moore, do you have any rebuttal testimony?

Mr. Moore: Yes sir. Your Honor, we have a motion to intervene as an additional party plaintiff, Joseph Heath, who is here to testify as to the facts in his application.

Judge Bell: Why should we open up now and start a new case?

Mr. Moore: Well, he is a member of a class of persons who are already in the case. He is 54 years of age and is a Negro and he is not a freeholder in Taliaferro County and he has six children.

Judge Bell: You are trying to get around the fact that Mr. Turner cannot represent non-freeholders.

Mr. Moore: Well, our legal contention is that he can.

[134] Judge Bell: That's the idea of this intervention?

Mr. Moore: No sir. Our contention is that he can, but if anybody really wants to argue about it we can intervene in the other plaintiffs. It does not cause any delay. He wants the same relief as the existing plaintiffs.

Mr. Bloch: What is it, Your Honor?

Judge Bell: He says that he has got a man that wants to intervene in the case, so that he can represent the class entitled "Non-freeholders." Does he swear that he is not a freeholder?

Mr. Moore: Yes sir. He is present and he can testify to that.

Judge Bell: All that does is to make certain that the Court will reach the merits of the claim that an

application based on freeholders is unconstitutional. Do you have any objection to it, Mr. Bloch?

Mr. Bloch: The order says "Upon consideration of the above and foregoing the same is allowed and ordered filed subject to motions and objections." We have no objections to that. We have no objections to signing that order, and if any objections should occur we will let you know.

Judge Bell: All right, we will get Mr. Moore to agree to this, that all motions heretofore filed by the defendants would be as applicable to this intervenor as to the original plaintiffs.

Mr. Moore: Yes sir.

[135] Judge Bell: All right.

Mr. Moore: Everything in there—

Judge Bell: —So, we won't have to have any more pleadings.

Mr. Moore: That's right.

Judge Scarlett: You won't have to have any more evidence, will you?

Judge Bell: All your motions already filed will apply.

Mr. Bloch: Yes sir.

Judge Bell: Mr. Moore, sign that.

Mr. Moore: Your Honor, we have a motion for the allowance of reasonable attorney fees, supported by affidavits, and we would like to put on Mr. Turner for just a short rebuttal to the defendants' case.

Judge Bell: What about these attorney fees? Do you think you can support that by affidavits?

Mr. Moore: We can put a witness up, Your Honor.

Judge Bell: Let me see that. We will receive that motion for counsel fees and the affidavits on the condition that Mr. Block can file a counter affidavit, and we won't have to go into that today.

Mr. Bloch: Your Honor, they are not entitled to any attorneys' fees at all in this case.

Judge Bell: Well, you file a brief on that. I told you last year that the Fourth Circuit has been allowing some [136] attorney's fees.

Mr. Bloch: I had heard of this, but I didn't know for sure, and—

Judge Bell: —I think at the time of the last hearing the Fourth Circuit had allowed some attorney's fees.

Mr. Bloch: This is the first I heard of it coming up today. What direction is Your Honor going to give it?

Judge Bell: I am not at all surprised that he asked for attorney's fees. This is sort of a trend going on. I am just saying that he can file his motion and his affidavit and you can file a counter-affidavit and a brief saying that he is not entitled to anything. In other words, it is just a motion that he has filed now. It could have been filed after we disposed of the case as for that matter. It is sorta like a cost bill.

Judge Scarlett: Let me ask a question. How much attorney's fees are you asking for? It is just a matter of curiosity.

Judge Bell: Well, he says that his services are worth \$350.00 a day and he has it figured out to where it would run about ten days.

Mr. Moore: No sir. We figured out for the day we were down in Augusta. We put in about 74 hours.

Judge Bell: Your charges are just a little bit higher than mine was when I was a lawyer, but I am sure you are a much better lawyer than I was.

[137] Mr. Moore: They charge more than we do in Atlanta, Your Honor.

Judge Bell: I am sure that Mr. Bloch would be glad to get to charging on that basis.

Mr. Moore: Actually the charge is much greater by the hour.

Judge Scarlett: It is not what you charge. It is how much you can get.

Mr. Bloch: All I can say to this is "Your's received and contents noted."

Judge Bell: Well, that is just sort of a side issue. We will take that up at the proper time.

Mr. Moore: Yes sir.

Judge Bell: All right, proceed, Mr. Moore.

Mr. Moore: We would like to call Mr. Calvin Turner to the stand.

Judge Bell: All right, Mr. Turner, take the stand. Mr. Turner has already been sworn from the last hearing. You won't have to reswear him. Have a seat up there, Mr. Turner.

[138] CALVIN TURNER, recalled on behalf of the plaintiffs, testified as follows:

Redirect Examination by Mr. Moore:

Q. Would you state your name, please? A. Calvin G. Turner.

Q. Have you been a life long resident of Crawfordville, Taliaferro County, Georgia? A. Yes, I have.

Q. How long has that been? A. Thirty Six years.

Q. Do you know Mr. Casper Evans? A. I do.

Q. Can you indicate to the court how long you have known him? A. I have known Mr. Casper Evans, and if it please the Court, he is a relative, a distant relative of mine and I have known him since birth, since I was big enough to know anybody. In fact, he lives, not only in the Militia District that I live in, but he lives in the immediate community in which I live.

Q. And where is that? A. In the Springfield community.

Q. And what Militia District? A. It is in 606. In the 606 Militia District.

[139] Q. Do you know approximately how old Mr. Evans is? A. Mr. Casper Evans is about 71 or 72 years old.

Judge Bell: About the same age as your father.

The Witness: My grandfather, about the same age of my grandfather.

Q. Do you have any personal knowledge of Mr. Evans' educational background? A. Certainly by knowing him, by growing up in a community with him, going to Sunday School, church, my knowledge of Mr. Casper Evans is—well, I will say this: Is one of the poorest selections to represent Taliaferro County on the Board of Education possible.

Q. And why is that? A. Because, first of all, physically—I think when a man reaches 70 or 71 years old, who has retired from farming, who has retired from all of his occupations, and who will state to the community that he is too old, that he doesn't feel like getting out in the public any more than going to church, and he has made this clear

many times, because we have asked him if he would keep up, or would attend community meetings and community affairs, and this has been his statement everytime. He has made statements in the church that "I am getting old now."

Q. Do you know how far he has gone in school? A. My general knowledge of Mr. Casper Evans maybe the third or fourth grade and at that time a school year wasn't but, I believe, about six months.

[140] Q. When he was a boy? A. When he was a boy, yes.

Q. Do you know whether he has lived in Taliaferro County all of his life? A. He was born in Taliaferro, as far as I can go back and as far as the record will show, you know, he has lived there all of his life.

Judge Bell: Does he own his land?

The Witness: Judge, I can't answer that. He lives on the land that his son owns that was bought while he was in service.

Judge Scarlett: Does he live on the same place that he has been living all the time?

The Witness: He is living in the place that he has been living since I have known him.

Judge Bell: Does he have any children?

The Witness: He has some seven children. His baby, his youngest child is about 32 years of age.

Judge Bell: Is he a respected citizen in the community?

The Witness: He is a respected citizen as far as moral character is concerned.

Judge Bell: Has he made a living for himself, or has he been on relief? How has he lived all of these years?

The Witness: He has gotten by on his own all these years.

Judge Bell: But he is self reliant? Is he a farmer?

[141] The Witness: He is a farmer.

Q. Does he have any grandchildren in the Taliaferro County Schools? A. He does. He has four grandchildren by one of his sons, and I think he has some two, maybe, by his daughter. He has his daughter and son residing in Taliaferro County now.

Q. Did his children complete school in Taliaferro County, in the Taliaferro County School System? A. His son, his baby son, is a victim of a drop out in the Taliaferro County System. He has two daughters that has finished, as far as my remembrance, highschool back in the early forties.

Q. Now, do you know whether or not he has a reputation with the Negro Community of Taliaferro County as an "Uncle Tom"?

The Witness: Well, being a member of the Negro community, I think I would have to answer "Yes."

Q. What is meant by the phrase "Uncle Tom?" A. The phrase that is used in the Negro community as an Uncle Tom is a person who cannot exercise his constitutional rights because of economic reprisals that can be brought, and that is in turn people on welfare, who is drawing some type of old age assistance, a person who really has never had an opportunity to speak up for their rights and they are just afraid. Period.

[142] Judge Bell: Let me ask a question there. Might not you also consider a man an Uncle Tom

who won't participate in the most active, sort of an activist program that is going on? For example, if you wanted to march and block the school buses and this Mr. Evans wouldn't go with you and block the school buses, wouldn't you call him an Uncle Tom?

The Witness: Judge, no sir. In the terms in which we are using "Uncle Tom" is a person who does not speak up and stand up as the law provides, that is prescribed or interpreted generally throughout the community.

Judge Bell: What law, what right is he giving up?

The Witness: Well, he has stated in many cases that he didn't feel competent. He has stated this to the Negro community.

Judge Bell: That he didn't feel competent?

The Witness: Yes sir. I have seen him make excuses when it comes to intellectual involvement.

Judge Scarlett: Well, don't you think a lot of other people ought to do that when it comes to talking?

The Witness: State that again, please, sir.

Judge Scarlett: I said, don't you think a lot of people who claim to have intellectual attainment are better off if they don't get up and make speeches?

The Witness: I think so, but the question I asked he so chosed to do so.

Judge Bell: What I was getting at, Mr. Turner, it seems to me if I live, we will say, for example, if I lived in [143] Alabama and I didn't want to agree with Governor Wallace I suppose somebody would say that I was an Uncle Tom, so they would get a name up for me because I didn't want to do what the

strongest man wanted to do. I am trying to find out if you are trying to practice thought control over Mr. Evans because he won't do what you think ought to be done. You have a freedom in this country not to do what your neighbor wants to do. That's a big freedom. That is what I am getting at. Now, lets talk about that.

The Witness: All right. Judge, thank you, I think each time I mention or answer a question about Mr. Evans I brought the general thinking of the community, because we are talking about the community.

Mr. Bloch: Your Honor, I object to all of this testimony on the ground that there is no issue in this case made by the complaint, either by amendment or otherwise, as to the qualification of the member which has been legally selected in accordance with the processes of the Georgia law.

Judge Bell: Well, there is a general issue in the case that the democratic process hasn't been working over there in Taliaferro County, and they say it still is not working because they didn't consult with the Negro community about who they were going to put on the school board, and they put on a man that, at least in Mr. Turner's group in the Negro Community, don't like. They are not satisfied with him. I guess Mr. Evans could get him [144] up a crowd, or a group, who would say, "Well, this is our man." Anyway, let him go ahead and testify about whatever is in the complaint.

Mr. Bloch: Whether or not the democratic process is working in Taliaferro County is not a judicial question for a decision by a Three Judge Court.

Judge Bell: Well, I understand that, but whether the grand jury was illegally composed is a question, and we are running out of that question.

Mr. Bloch: Well, I suggest that Mr. Evans is elected for a term that expires in August of 1968, and—

Judge Bell: —They may have another man they want to put up at that time and if they do they can go to the grand jury. Of course, he was their man at that time. We know that, but let him go ahead and testify. He doesn't like Mr. Evans—well, he didn't say that he didn't like him. He said that he didn't think Mr. Evans was qualified. I don't want to put words in his mouth. He said he was related to him, as a matter of fact.

Mr. Bloch: It just so happens that his judgment as to the qualifications of Mr. Evans is not the guiding star in the election.

Judge Bell: I understand that. We are having sort of a town meeting here this morning.

Judge Scarlett: Well, I will agree with you on that. [145] Let me ask you a question, do you still live in that community?

The Witness: I still reside in Taliaferro County in the same community that I was born in.

Judge Scarlett: Didn't you testify the last time that you were working somewhere else?

The Witness: Judge, I believe I remember clearly what I said. I didn't make that statement. I never made that statement.

Mr. Moore: Answer Judge Bell's question.

Judge Bell: Well, let him finish with Judge Scarlett. Judge Scarlett if he said he was working off somewhere in another county.

Judge Scarlett: He said another community, I think. It has been a long time ago, but I recall him saying something about working somewhere else.

The Witness: The statement that I did make, the first trip to the Board of Education when the committee met and I was a part of that committee and the reason I wasn't present was because I was not available. That was the only statement I made.

Judge Scarlett: I thought somebody asked you—I may be mistaken—but my recollection is that somebody asked you where you worked and I thought you said that you were working elsewhere, or living elsewhere, or something like that.

The Witness: No sir.

Judge Scarlett: Well, I am in error then.

Q. Do you remember Judge Bell's question about [146] what they would call him if he was opposed to Governor Wallace over in Alabama?

Judge Bell: What would they call me?

Q. What would they call him?

Judge Bell: They would get up some name for me because I wouldn't join in with their group. I don't know whether it would be an Uncle Tom or not. I guess they would call me an Uncle John or something.

The Witness: I would like to answer Judge Bell's question. I think there is no comparison, first of all, because Governor Wallace is in Alabama and he represents the people of Alabama.

Judge Bell: But that doesn't mean that he represents everybody.

The Witness: Well, those people in Alabama would have to complain and that complaint maybe peculiar and unrelated to the one that we are making in that we are living in a community with the man that we live together real well. We see one another day by day.

Judge Bell: What I am getting at, Mr. Turner, is what right do you have to criticise another man, another citizen, because he doesn't think like you think? What right do you have to exercise thought control over Mr. Evans? What right do you have to do that?

The Witness: I don't have any right, but I think this [147] is a part of the democratic process.

Judge Bell: Did you try to persuade him?

The Witness: I can't say that we tried to persuade him because it is his constitutional right to feel like he wants to feel.

Judge Bell: Right.

The Witness: Or to react like he wants to react; but I think this is a part of the democratic process, I submit, that it is the community that he represents, and the people in that community which really is assigned to the 606 district knew nothing about the election of Mr. Evans, and if he is going to represent that district this certainly wouldn't be the democratic process.

Judge Bell: Well, that's true, but as Mr. Bloch points out he is only elected to August. Certainly you are better off to have a member on the board. You told us in Augusta that you couldn't even get

an audience before the board, that they wouldn't even let you appear there. Now, you have got a Negro on the board. You have got Negroes on the grand jury where you can get more Negroes on the board. I say that the merit system ought to prevail, and then if you have got a better man than Mr. Evans then you ought to get him on the board through the regular processes. We just can't set up a court supervised government. There is a break down in government if the courts have got to run it. You obviously don't think this man is qualified. That's the end of that. You just don't think this man is qualified. I don't think the Court should take any cognizance of the fact though that you [148] think he was an Uncle Tom. I don't think the Court should lend itself to any sort of thought control, of that sort.

Judge Scarlett: And I don't think the Court should get into the question of the election of Governor Wallace.

Judge Bell: I was giving that as an example.

Mr. Moore: He wasn't trying to control the thoughts of Mr. Evans. He was trying to explain to the contrary, that he recognized Mr. Evans' opinion. He is not chased out of the community.

Judge Morgan: You don't think, in your opinion, that this man truly represents the thought, a truly representative of your community, is that it?

The Witness: That's it. May I explain a little more. I think this would help the Court.

Judge Bell: All right.

The Witness: That there is Mr. Casper Evans, who has been selected by a majority of the grand

jury, which is made up of a majority of the Taliaferro County White. There is Mr. Evans' brother, his brother, who was recommended, if I am correct, I could be wrong, if this is the process, by the County Commissioners of Taliaferro County and approved by the State, whatever that process is. Then there is a Mr. Willie James Hughes who has been called in to suggest and advise a Jury Commission, and then there is a daughter-in-law of Mr. Willie James Hughes who also served as an advisor to select Negroes as a cross section of the county. [149] Now with that being two families generally this does not represent the Negro community and I think, if I am right, this is the question, that it is not—

Judge Bell: —Just a minute. What job did they give Mr. Evans' brother?

The Witness: He is on the Welfare Board.

Judge Bell: How many people on the Welfare Board?

The Witness: I think there are about five.

Judge Bell: He has been put on the Welfare Board?

The Witness: He was put on the Welfare Board, and they came right back and put a brother of his on the Board of Education.

Judge Bell: They haven't given Hughes anything. They just got him to help them with the jury list.

The Witness: Well, if we would go down the line, Judge, we can see where these families are certain people—the only problem that we have, I think, with this situation, is not important as to how many Negroes are representative of the Negro community,

but who selects those Negroes. This is the only problem that we have.

Judge Bell: If you have a properly composed grand jury, when you find out who the grand jurors are, the way you do is you go and talk to the grand jurors about whoever it is you want?

The Witness: We didn't have this opportunity.

[150] Judge Bell: I know that but this is a temporary thing. In August this man's term expires and somebody else's term will probably expire at that time too.

Mr. Bloch: Just one.

Judge Bell: Just one?

Mr. Bloch: There maybe some of the older ones.

Judge Bell: That's what I say. There might be some more. Then you find out who the grand jurors are and you go talk to them about it.

Judge Morgan: Let me ask this question —

Judge Bell: —Suppose we picked out a man? Suppose the Court picked out one, which the Court wouldn't do, but suppose we did it and then somebody who didn't agree with your philosophy would come in here and want to intervene and say you picked out a man who is under Calvin Turner's influence.

Judge Morgan: Let me ask this question: How many Negroes do you say in there that had a high school education, or a college education? You have a college education?

The Witness: I do.

Judge Bell: Where from?

The Witness: Fort Valley State.

Judge Morgan: In that community is what I want to ask you? How many in that community?

The Witness: Judge, it would have represented the [151] community very well if it had been even Casper Evans' son, who has children in school. There is another man who lives in that same community who has a Bachelor's Degree. There is another lady who lives in that community that has a Bachelor's Degree, and none of these people are affiliated in no way directly with the school system of Taliaferro County. I think this is the thing, if it pleases the Court, that really kinda disturbs that district, that there were people, if the Negroes had a chance to know or to suggest they certainly would suggested a man that would have been more beneficial to the Board and to the community.

Judge Scarlett: Well, gentlemen, don't you all think this is just foolish talking? Why go through all of this? He has got his remedy. As you so ably pointed out, Judge, with the exception of my Governor Wallace, that they can go before the grand jury and get some one else if the grand jury thinks it's proper. Now, that is your remedy. It is not our remedy.

Judge Bell: Well, we understand that the man who was selected, you don't think he was qualified, or was as qualified as several other people in the community?

The Witness: Yes sir.

Judge Bell: And you didn't have any way of knowing that this man was going to be selected, that the populace was not consulted, the citizens of the community. Now, Mr. Bloch, I want to ask you

and Mr. Moore one question. It seems to me that I heard somewhere that there is a new constitutional amendment [152] in Georgia whereby a county can get off the grand jury elected system—how do you get off of it? And just having elected school board people? Now, everybody has got some kind of an administrative agency coming into court and saying you have got to appoint more Negroes. I think you are going to finally just have an election, everybody is going to have to be elected, as near as I can tell.

Judge Searlett: That's what they are doing now. How do you get off that, Mr. Evans? Who knows that?

Mr. Evans: There was an amendment. It's set forth in my answer, an amendment, providing that by local law and a referendum of the people the county school boards, the method of selection of county school boards can be local by local laws.

Judge Bell: I mean does that have a local act and then a referendum?

Mr. Evans: Yes sir.

Judge Morgan: Well, isn't it true that formerly you just passed a local Act? You just took the election out of the hands of the grand jury?

Mr. Evans: No sir. Before it had to be a constitutional Amendment. You see, the Constitution of Georgia, in the first instance provides for the election of the County School Board by members of the Grand Jury. That is the standard system. A great number of counties, this is one of the constitutional problems that [153] the State of Georgia has had. There are probably 50 or 60 or more counties have through local constitutional amendments—

Judge Morgan: —I didn't know there was a constitutional amendment required but I know my county used to be by the Grand Jury and now they are elected by the people from the various districts, but I thought that was a local Act.

Judge Bell: Well, that's all right. We have got that cleared up now. Anything else you want to ask Mr. Turner?

Mr. Moore: Yes sir, one or two more questions.

Judge Bell: All right.

By Mr. Moore:

Q. Mr. Turner, are there other people in your community with greater educational attainment than Mr. Casper Evans?

Judge Bell: He has already said that.

The Witness: Mr. Casper Evans was taken from the lower bracket, the very lowest bracket, of those persons who have attained an education.

Mr. Moore: That's all.

Judge Bell: Mr. Bloch, you any questions?

Mr. Bloch: Yes sir.

Recross Examination by Mr. Bloch:

Q. Don't you suppose whatever Negro citizen in [154] Taliaferro County would be selected as a member of the Board of Education that there would be some of the Negro citizens who would not like that particular person? Answer yes or no.

Mr. Moore: Well, he has a right to explain his answer.

Judge Bell: Answer yes or no, first and then he can explain.

The Witness: Ask the question once more, please.

Mr. Bloch: Read the question, Mr. Watson.

The Reporter: Don't you suppose whatever Negro citizens in Taliaferro County would be selected as a member of the Board of Education that there would be some of the Negro citizens who would not like that particular person? Answer yes or no.

The Witness: Yes, in Taliaferro County, but we are dealing with a Militia District.

Judge Bell: Apparently one of these school board members is selected from each Militia District, is that a local custom they have there or is that the law?

Mr. Bloch: There is something in the law about it, I think.

Judge Bell: All right, anything else, Mr. Bloch?

Mr. Bloch: I want to ask him about his age.

Q. Did you say he was 71? A. I said about 71 or 72, about the age of my grandfather.

[155] Q. About the age of your grandfather? A. About his age. They grew up together.

Q. Are you complaining about his age? A. I am not. I did not complain about his age.

Judge Bell: He is having some fun with you. He is about that age.

Mr. Bloch: I am older than that, and so is Mr. Justice Black.

Judge Bell: Mr. Turner's grandfather testified two years ago in the trial in Augusta and he was asked to point out a witness, some Reverend who

had been preaching on the courthouse lawn. I said: "Where is he? Is he in the court room?" He said: "Yes, he is back there in the back." I said: "Who is he?" He said: "The man with the shade drawn." That was the Reverend that was doing the preaching. That was your grandfather.

The Witness: Oh, yes.

Judge Bell: He was in court testifying. You have to be very careful about saying anything about age if it is up around about 70.

Mr. Bloch: I was just wondering if he had any office in his church?

The Witness: He does.

Q. What? A. He is the Chairman of the Board of Deacons in his church.

[156] Judge Scarlett: What church is that?

The Witness: Friendship Baptist Church.

Mr. Bloch: That's all.

Judge Bell: All right, anything else?

The Witness: Judge, if it pleases the Court, I would like to make this statement. I think—well, what I think doesn't matter. But I think the majority of the Negroes are asking for this. It is not to be just agitating, but to be representative, to be represented. That is the only thing we are asking for now is to be represented. Now, I am wondering how can this be done without dealing with the Jury Commissioners. The Jury Commission is the thing that we want, because we could solve the Board of Education, and—

Judge Bell: —Well, you have got it now.

The Witness: The Jury Commission?

Judge Bell: You haven't got a Negro on the Jury Commission, but you have got Negroes on the jury list now, and the next time they draw a grand jury by lot you may have two thirds Negro on the grand jury.

The Witness: Let me ask this question, Judge, if you please. We have proven and established and I think the Court has accepted that there is 55 percent of the population in Taliaferro County is Negroes, and I think Mr. Watson and I both agree that there is about 50 percent registered voters who are Negroes, both Negroes and White, about 50-50, why couldn't the County Negro [157] community ask for 50 percent of the Jury Commissioners Negroes?

Judge Bell: Because the law doesn't give you that right. You don't have a right to apportion. You only have a right to a fair cross section. The Federal Jury List Examiner in Atlanta sent a card out to every fiftieth name on the voters list in the six or eight county area. Well, it turned out that the Negro population was 21 per cent and they only had 15 per cent on the jury. Nobody knows how that turned out like that. It just turned out like that. Now in this list here, if there is something wrong in one of these groups, 225 people unknown, 33 people on the list twice and that sort of a thing, then it can be called to the attention of the court, but as long as they have a fair approach to it you can't insist on it being exactly even. It could come out, when they draw by lottery these grand jurors you might have two thirds Negroes on that. It is entirely possible, just like this time you had two thirds white, but if you just get a fair list that is all you can insist on. That

is the law. The Supreme Court says that you have so many races and face in this country that the country would fly apart if you put everything on a percentage basis. How would you ever get a jury list examiner in New York City? We just never have done that in this country, but that doesn't mean that there is anything wrong, if you have been discriminated against, because it is not 50-50. There may be discrimination that is not an illegal discrimination, in other words. [158] Now, you would feel better, of course, if there had been a Negro Jury Commissioner, and then you wouldn't have all the doubts you have about it. Those things just have to be worked out. We are making a little bit of progress, as I see it. They are on the jury list now in Taliaferro County.

Mr. Moore: If I may be heard, Your Honor, just for the purpose of this case—I don't know what this Court's time table is—but on just the facts that have been proved in the case we would be pleased to submit these facts to a statistician and let the statistician—

Judge Bell: No. I don't pay anything to this statistician stuff. It's about to ruin this country by getting some mathematical professor somewhere to say that the probabilities are One Hundred Thirty Four Million to One that this couldn't happen. Now, we don't need anything like that. What you could help the court with would be to take these categories of names and see how many of them that were eliminated were Negroes and how many were White. That would help the Court more than anything else. That's a fact.

Mr. Moore: Your Honor, when we started on the basis of 50-50—

Judge Bell: You see, that's the trouble. You always get the cart before the horse. You can't just assume that the list ought to be 50-50. The Seventh Amendment is still in the [159] Constitution. You are entitled to have a juror who can understand jury proceedings.

Mr. Moore: That's a different question, Your Honor. What I am saying 50-50, is that the voting list, if we accept the testimony of the witness, that it is 50-50, that is, fifty percent of each race voted in the last election, that's one you have heard. If we take the universe from the Census tract of 1960 we find, Your Honor, that there are more Negroes in the county above age 21 than any other group and it would appear on that common sense basis, Your Honor—

Judge Bell: —Well, the Georgia Law says use the voters' list. This happens to be one of the counties where just about everybody of both races are registered to vote, so they started out with the jury list and they worked it out in a very fair way, as near as I can tell, unless there is something wrong in one of these categories that they eliminated. They started out with 79 people that they eliminated because they were under 21 years of age. Now, what could be wrong with that? That could be White or Negro. 93 people dead. Death is no respecter of race, as far as I know, so you couldn't make anything out of that. Poor health and overage. Well, if they are over 65 years of age they are automatically eliminated, so there couldn't be anything wrong with that.

Now, poor health is another thing. Now, you could have something wrong about that. Now, 514 who maintain Taliaferro County as a permanent place but most of the [160] time away from the county. I imagine that has more White than Negroes in it. I don't know that. The next is persons who requested to be eliminated from consideration was 48 and only one was a Negro. You could not complain about that. The next one is about persons whom information could not be obtained 225. Now, there could be something wrong about that. We don't know it. Before the Court would even look at it you would have to show that there were a good many Negroes in that group. Now, there is only 110 names where they applied this intelligence standard out of the whole list. Names on the voters list more than once was 33. But it turned out that there were 608 names left, and then they took those names and put them in alphabetical order and took every other name on the list. Now, I don't know how many were White or how many were Negroes on that list of 698 names. That could have something to do with it and it could not, and then they drew by lot to get the grand jury list.

Mr. Moore: But, Your Honor, you don't stop there, under the State Law, you have to go and look and see if there are any identifiable groups.

Judge Bell: Oh, well, there are two identifiable groups in Taliaferro County. You have been to Taliaferro County just like I have. There are White people and Negro people. They haven't got any Labor Unions, blue collar, white collar, or anything like that. They haven't got any Jewish groups or Italian groups or [161] Polish groups.

Mr. Moore: But if you take that voters list, if you use that voters list, it doesn't reflect a true cross section of the people that are eligible. You have got to go out and look around, and under the proof the majority of the people of Taliaferro County that qualifies above the age 21 are Negroes.

Judge Bell: Well, I don't know about that. There are 225 people that can't be found, and 33 on the list twice.

Mr. Moore: That's on the voters list. We are talking about the Census Tract.

Judge Bell: Well, I tell you when you get down to a final result with 113 Negroes and 191 White that is getting pretty close. It wouldn't take but a switch of 40 people to make it 50-50.

Mr. Moore: But it just doesn't work out, Your Honor. The Commissioners are all white.

Judge Morgan: Well, don't you think a lot of that can be remedied at the ballot box?

Mr. Moore: No, sir, Your Honor. As long as we have got these procedures we are going to have this type of squabbling.

Judge Morgan: Well, you have got a majority on the voters list, 50-50, or a slight majority.

Mr. Moore: As long as we have these procedures, it doesn't matter what type of voting rights they apparently have, they will come out with the short end of the stick, having an [162] all black school system with no black representation in the administration and policy making and—

Judge Bell: —Mr. Moore, let me tell you about the school system, so you won't keep arguing about that.

Nobody has done anything about the school system, except you brought a suit to get the school system integrated and then what happened? The white people left. Now, that is all that has happened about that. There is not anything under the table or crooked or anything like that. The white people just left. That is all there is to that. You brought the suit, didn't you, or was it the Department of Justice that brought it?

Mr. Moore: This is not a casual thing, Your Honor, that the white people left. There is some obligation to stabilize the situation under the school board.

Judge Bell: Well, they have tried to get another county to take them, so it would be stabilized, but they couldn't get that done.

Mr. Moore: I don't recall that being in the Receiver's Report.

Judge Bell: The Receiver reported it to me and that is the reason I asked Mrs. Williams if it was true in order to get it in the record and it is now in the record.

Mr. Moore: But that was outside of his report.

Judge Bell: Well, it wasn't part of his report, but [163] it appeared obvious that there wasn't going to be no more Negroes in the school system I asked him to make some effort to get it merged with another county so we wouldn't have that result. Well, he came back and told me that he couldn't do it, and so I now have it in the record by having Mrs. Williams to testify about it.

Mr. Bloch: I just want to call attention to this report that I filed, the last three items in the summary, the percentages.

Judge Bell: Yes.

Mr. Bloch: Those were not given to me by the Jury Commissioners. I figured those out myself for the benefit of myself and the Court. 37 percent, 26 per cent and 28 per cent.

Judge Bell: All right.

Mr. Bloch: That was not furnished to me and was no part of their work. I just wanted to see how it worked and for the benefit of the Court.

Judge Bell: Well, I think when we get this other data about these groups—

Mr. Bloch: —We will get up that.

Judge Bell: —It will fall in place, so we will just wait and see about that.

Mr. Bloch: All right.

Judge Bell: Anything else, Mr. Moore?

Mr. Moore: No sir.

[164] Judge Bell: Anything, Mr. Evans?

Mr. Evans: No sir, I submitted a brief.

Judge Bell: All right, the Court will take the case under advisement, pending receipt of all of these extra documents and what-not that we are supposed to receive.

Mr. Bloch: We will get it just as quick as we can, but it is going to take some time to get the breakdown on those figures.

Judge Bell: We know it will. You will have a reasonable time.

Mr. Bloch: Thank you.

Judge Bell: All right, Court is adjourned.

The Marshall: Court is adjourned.

Opinion and Order

Before BELL, *Circuit Judge* and SCARLETT and MORGAN,
District Judges.

PER CURIAM:

This case is quasi-sequential to *Turner v. Goolsby*, S.D. Ga., 1966, 255 F.Supp. 725, also a three-judge matter, and that case is referred to as background. See also *United States v. Jefferson County Board of Education*, 380 F.2d 385, dissenting opinion, p. 416, fn. 6. These decisions point to the fact that the Taliaferro County School system is desegregated to the extent that there is only one grammar school and one high school in the entire system but there are no white children attending the public school system.¹ On the other hand, the school board members are all of the white race. This set of circumstances led to the instant class action brought by a Negro school child and her father on behalf of all Negro residents of Taliaferro County, Georgia, similarly situated. Another father and his five school children were added later as parties plaintiff.

The thrust of the complaint is that the Negroes have no voice in school management and affairs in that there are no Negroes on the school board. It is contended that Art. VII, § V, ¶ I of the Constitution of the State of

¹ According to the evidence in the instant case, in the 1966-67 school term there were 458 Negro children in the system. There were 72 white children attending a private school in grades one through ten. Cf. the recent Supreme Court decisions involving the desegregation of small rural school systems in Virginia and Arkansas, respectively. *Green v. County School Board of New Kent County, Virginia*, 1968. — U.S. —, 88 S.Ct. —, 20 L.Ed. 3d 716; *Raney v. The Board of Education of the Gould School District*, 1968, 88 U.S. —, — S.Ct. —, 20 L.Ed.2d 727.

Georgia of 1945, Ga. Code Ann. § 2-6801, and Ga. Code Ann. §§ 32-902, 901.1, 903 and 905, all having to do with the election of county school boards by the grand jury, are unconstitutional under the equal protection and due process clauses of the Fourteenth Amendment and under the Thirteenth Amendment, both facially and as applied by reason of the systematic and long continued exclusion of Negroes and non-freeholders as members of the Board of Education of Taliaferro County, Georgia, and on the selecting grand juries. The same contention is made with respect to the Georgia laws regarding the appointment of and service as jury commissioners. Ga. Code Ann. §§ 59-101 and 106 (Ga. Laws 1967, p. 251, Vol. 1). Here again unconstitutionality in application is asserted on the basis of systematic exclusion of members of the Negro race from service as jury commissioner. Unconstitutionality is claimed also by reason of the alleged uncertainty, indefiniteness, and vagueness of the standards set forth in each of the statutes.²

Complainants seek an order declaring the aforesaid Georgia Constitutional provision and statutes unconstitutional on their face and as applied, and they also pray for ancillary money damages in the amount of \$500,000 to compensate them for past deprivations and denials of federal rights. By amendment they pray for attorneys fees.

Defendants named in the complaint are the members of the Board of Education of Taliaferro County and the jury

² Another allegation is that the school board has deprived Negro school children of text books, facilities, laboratories, recreation facilities, teaching programs, bus transportation and other benefits to the extent that they are ill equipped to advance in the modern world and are mere peons in the hands of the white race. This allegation fails utterly for want of proof and will be eliminated from the case at this point.

commissioners of Taliaferro County. Additionally, three citizens of Taliaferro County were sued individually and in their capacity as grand jurors of Taliaferro County but they were dismissed by an order entered on January 30, 1968 granting a motion to dismiss for failure to state a claim against them upon which relief could be granted.

A three-judge District Court was convened under 28 USCA, §§ 2281 and 2284. The case was heard on January 23, 1968. The evidence indicated and the court announced then and now so finds that Negroes were being systematically excluded from the grand juries through token inclusion. Jurors were being selected by the jury commissioners from the voter registration lists as required by the Georgia statute, Ga. Code § 59-106, *supra*. The number of Negro and white voters in the county were substantially the same. It developed that there were 272 whites and 56 Negroes on the traverse jury list; 119 whites and only 11 Negroes on the grand jury list. It appeared also without contradiction that jury commissioners were all white and that the members of the Board of Education were all white. The grand jury situation was such that Negroes had little chance of appointment to the school board.

The hearing was adjourned and Charles J. Bloch, Esq., of counsel for the defendants, was directed by the court, pending the continued hearing, to familiarize the defendants with the provisions of law relating to the prohibition against systematically excluding Negroes from the jury system. The hearing was resumed on February 23, 1968 and Mr. Bloch reported to the court and introduced evidence to the effect that Honorable R. L. Stephens, Judge of the Superior Court of Taliaferro County, Georgia, had, by order dated January 26, 1968, discharged the grand jury and required that the jury lists, both traverse and

grand, be revised in light of the oral pronouncement by this court that the grand jury master list was illegally composed. The jury commissioners were directed by Judge Stephens to immediately recompose the jury lists. The following is from the report filed on behalf of the jury commissioners. This report was substantiated by the testimony of the chairman of the jury commissioners and stands uncontradicted.

"The Jury Commissioners met beginning on the Monday following the order, to wit, January 29, 1968. They had for their consideration the list of persons who were registered to vote in the last general election. That list contained a total of 2,152 names. We are advised that the Jury Commissioners considered each and every name in that list. When the Commissioners did not have any information with respect to a particular individual, they asked other people in the community about him or her. In particular, when they did not know about persons of the Negro race, they asked Negro people about them. In considering each and every name they eliminated the following numbers of names without regard to race for the following reasons:

Poor Health and over-age	374
Under 21 years of age	79
Dead	93
Persons who maintained Taliaferro County as a permanent place of residence but were most of the time away from the county	514

Persons who requested to be eliminated from consideration	48
Persons about whom information could not be obtained	225
Persons of both the white and Negro race who were rejected by the Jury Commissioners as not conforming to the statutory qualifications for juries either because of their being unintelligent or because of their not being upright citizens	178
Names on voters list more than once	33

"This left a total of 608 names. Since 608 names are more than the Jury Commissioners deemed to be needed in the traverse jury box, they arranged these 608 names in alphabetical order, and took every other name on the list alternately and placed those names on the traverse jury list. This left a total of 304 names, and only then did the Commissioners look to see how many of these 304 names were those of Negroes and how many were those of whites. They determined that 113 were Negroes and 191 were white.

"Their next task was to select not more than two-fifths of this traverse jury list for the grand jury list. They decided that the fairest system would be to draw names by lot. They drew a total of 121 names by lot and put those names on the grand jury list. Having done that, they looked to see how many were of the Negro race and how many of the white race. They ascertained that 44 were the names of Negroes and 77 were names of whites."

It developed that the jury commissioners were assisted by two Negro residents of the county in making the jury revision. The chairman of jury commissioners agreed that a Negro would be appointed as clerk or secretary to the commissioners until such time as a Negro or Negroes could be appointed to membership on the commission in order that the Negroes of the county, in the meantime, would have some representation in the operation of the jury system.

The court requested the chairman of the jury commissioners to designate by race those persons who were on the voter registration list and who were eliminated from jury service. That was done subsequent to the adjourned hearing with the following result: 71 of the under 21 group were Negroes; 191 of those in poor health were Negroes; 263 of the 533 who were away from Taliaferro County Negroes; 171 of the 178 disqualified were Negroes; while only 3 of the 43 persons who requested to be relieved from jury duty were of the Negro race. The other categories were unknown as to race.

After the new grand and traverse jury lists had been completed and after all the names had been put in the respective jury boxes, a new grand jury was drawn by Judge Stevens from the jury box by lot. A total of 32 grand jurors were drawn: 9 Negroes and 23 whites. The grand jury actually serving consisted of 23 grand jurors, 17 of whom were whites and 6 Negroes, the others having been excused by the court.

That grand jury convened on Friday, February 16, for the purpose of considering the regular business of the court and for the purpose of confirming or rejecting persons who had been selected by the Board of Education of Taliaferro County, Georgia, to succeed Horace E. Williams.

Jr. for a term to expire August 25, 1968, Mr. Williams having resigned, and to succeed Albert Drinkard, deceased, for a term to expire August 22, 1969. Casper Evans, Sr., a Negro, had been chosen by the Board of Education to serve until the next meeting of the grand jury, and Moore Pittman, who is of the white race, had been chosen by the Board of Education to succeed Albert Drinkard, deceased, for the term expiring August 23, 1969. These choices by the Board of Education were confirmed by the grand jury.

The court finds and concludes that the grand jury list, as revised, is not unconstitutional or illegal. The court finds and concludes that the constitutional provision and the statutes in question are not unconstitutional on their face or as applied. There is nothing in the constitutional provision or in the statutes which contemplates or permits the resulting systematic exclusion from the grand juries. The standards are not inadequate. The facts showed systematic exclusion in the administration of the grand jury system prior to the revision but this resulted from the administration of the system and not from the constitutional provision and statutes under attack. The court also concludes that the provision requiring that members of the school board be freeholders has not been shown to be an unconstitutional requirement. There was no evidence to indicate that such a qualification resulted in an invidious discrimination against any particular segment of the community, based on race or otherwise.

There is thus no merit in the three-judge District Court questions presented. There remain, however, two single judge questions. One is that of the systematic exclusion of Negroes from the grand juries. This is the question that stems from the manner in which the grand jury system was

administered. The court in its discretion will retain jurisdiction over this single judge question and grant such relief as indicated. *Turner v. Goolsby*, supra; and cf. *United States v. Georgia Public Service Commission*, 196², 371 U.S. 285, 83 S.Ct. 397, 9 L.Ed.2d 317, to the effect that a three-judge District Court may dispose of a case on a ground that would not have justified calling a three-judge court. The jury commissioners will be enjoined from systematically excluding Negroes from the grand jury system in Taliaferro County. Cf. *Billingsley v. Clayton*, 5 Cir., 1966, 359 F.2d 13.

The other single judge question concerns the prayer for damages. See 42 USCA, § 1983 on the question of damages. Defendants claim a Seventh Amendment right to jury trial if the question is to be considered and we hold that there is merit in this contention. *Dairy Queen, Inc. v. Wood*, 1962, 369 U.S. 469, 8 L.Ed.2d 44. In view of the cumbersome which would be involved in a three-judge District Court jury trial and that such is not contemplated by the three-judge District Court statute, 28 USCA, § 2284, we decline, in our discretion, to entertain the question of ancillary damages.

All other prayers for relief are denied including the prayer for attorneys fees. Costs will be taxed against the defendant school board members and jury commissioners and the costs shall be allowed to include the expenses of complainants in traveling to Brunswick, Georgia for the adjourned hearing to the extent that may be possible under costs statutes. The school board members are assessed on the basis that their conduct, in substantial measure, precipitated the suit.

Counsel for complainants may present an order enjoining the jury commissioners as aforesaid.

This 2nd day of August, 1968.

GRIFFIN B. BELL

United States Circuit Judge

LEWIS R. MORGAN

United States District Judge

FRANK SCARLETT

United States District Judge

Final Judgment

On the 15th day of November, 1967, a complaint was filed in the United States District Court for the Southern District of Georgia, Augusta Division, for injunctive relief, declaratory judgment, and ancillary damages, in the above-styled cause. Pursuant to the prayers of the complaint, a three-judge District Court was convened, consisting of the Honorable Griffin B. Bell, Circuit Judge, Honorable Frank M. Scarlett, resident District Judge, and Honorable Lewis R. Morgan, designated District Judge. This cause, having come on for hearing, and having been heard by the Court on the pleadings and proofs of the parties, oral argument of counsel, and briefs of the parties, the Court having entered its opinion, incorporating its findings of fact and conclusions of law, with respect thereto on August 5, 1968, and being advised in the premises.

IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED, as follows:

I

E. C. Moore, Guy F. Beazley, J. M. Taylor, L. T. Lunceford, Reuben H. Jones, and Clarence Griffith, Individually, and as Jury Commissioners of Taliaferro County, Georgia, and their successors in office, are hereby permanently restrained and enjoined from systematically excluding Negroes from the grand jury system in Taliaferro County, Georgia.

II

Article VIII, Section V, paragraph one of the Constitution of the State of Georgia of 1945, 2 Georgia Code An-

notated, Section 6801, 59 Ga. Code Annotated, Sections 101 and 106; and 32 Georgia Code Annotated, Sections 902, 902.1, 903, and 905 are not unconstitutional on their face or as applied. We decline, in our discretion, to entertain the question of ancillary damages.

III

All other prayers for relief including the prayer for attorneys fees and all motions of the plaintiffs and defendants, except the motion of defendants W. W. Fouche, Rastus Durham, and Elmo Bacon, sued herein individually and as representatives of the class of persons known as Grand Jurors of Taliaferro County, Georgia, which the Court hereinbefore granted, are denied.

IV

Costs, to the extent permitted by law, are assessed in favor of the plaintiffs, including the expenses of the complainants in traveling to Brunswick, Georgia, for the adjourned hearing, against the defendant members of the Board of Education of Taliaferro County, Georgia, and defendant members of the Jury Commission of Taliaferro County, Georgia.

This 18th day of September, 1968.

GRIFFIN B. BELL

United States Circuit Judge

LEWIS R. MORGAN

*United States Circuit Judge,
Then United States District Judge*

FRANK M. SCARLETT

Senior United States District Judge

Order of the Supreme Court of the United States

**IN THE
SUPREME COURT OF THE UNITED STATES**

February 25, 1969

In this case probable jurisdiction is noted and the case is placed on the summary calendar.



Supreme Court of the United States

No. 842 ---

, October Term, 19 68

Calvin Turner, et al.,

Appellants,

v.

W. W. Fouche, et al.

**APPEAL from the United States District Court
for the Southern District of Georgia.**

**The statement of jurisdiction in this case
having been submitted and considered by the Court,
probable jurisdiction is noted and the case is
placed on the summary calendar.**

February 24, 1969